

HIGH COURT OF MADHYA PRADESH,
BENCH AT GWALIOR
M.Cr.C. No.18297/2020

(Lucky alias Krishan Kumar Vs. The State of Madhya Pradesh)
(1)

Gwalior, dated : 9/7/2020

Shri Vivek Kumar Mishra, Advocate for the applicant.

Ms. Upendri Singh, Panel Lawyer for the respondent/State.

In pursuance of the directions issued by the Apex Court and guidelines issued by the High Court of Madhya Pradesh in the wake of COVID-19 outbreak, the matter was taken up through video conferencing while adhering to the norms of social distancing prescribed by the Government.

Heard learned counsel for the parties.

Case diary perused.

The applicant has filed this repeat application under section 439 of the Cr.P.C. for grant of bail. The previous one was dismissed on merits vide order dated 18/2/2020 passed in M.Cr.C. No.52345/2019.

The applicant has been arrested by Police Station Lahar, District Bhind, in connection with Crime No.175/2017 registered in relation to the offences punishable under sections 366, 346B, 323, 506 of the IPC and 11/13 of the MPDVPK Act

Allegations against the applicant, in short, are that on 13/7/2017 between 8 and 9 PM, he along with co-accused Balram Dadoriya, Monu Pachori and two others went to the house of prosecutrix and on gun point not only took documents relating to her

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studies and Rs.25,000/- kept in an Almirah, but also threw the prosecutrix in a vehicle standing outside after tying her mouth and threatened to kill her and her brother. Thereafter, they took her to Gwalior and Bhopal and subjected her to forcible sexual intercourse till 5/10/2017 while recording its video. They also took the signatures of prosecutrix on marriage related documents under threat of uploading such video on the Internet.

Learned counsel for the applicant submits that applicant has been falsely implicated in the case. He is in custody since 30.10.2019. In fact, the prosecutrix has solemnized marriage with main accused Balram, who is absconding and both Balram and prosecutrix are living married life. They had also sought police protection before this Court in W.P. No.5547/2017 and have been granted appropriate relief vide order dated 28/8/17. It is submitted that on 13/10/17, the prosecutrix had even lodged a report against her husband Balram, but at that time had not disclosed about any such incident with her, which prima facie reflects that the allegations are nothing but an after thought. The applicant has already put in more than 8 months of custody. Counsel for the applicant further submitted that due to COVID-19 outbreak, trial is being delayed and detention of applicant in already congested prisons may be detrimental. Applicant is a permanent resident of Ward No.4, P.S.Lahar, District Bhand and there is no likelihood of his absconion

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or tampering with the prosecution evidence. The applicant is ready to abide by all the terms and conditions as may be imposed by this Court. With the aforesaid submissions, prayer for grant of bail is made.

Learned counsel for the State opposed the application and prayed for its rejection by contending that on the basis of the allegations and the material available on record, no case for grant of bail is made out. It is submitted that some co-accused persons are still absconding.

At this stage, applicant volunteered to deposit an amount of Rs.10,000/-(Rupees Ten Thousand Only) in Prime Minister Citizen Assistance and Relief in Emergency Situation Fund (PM Cares Fund).

However, it would not be desirable to enter into the merits of the rival contentions at this juncture.

Considering the period of custody including that due to COVID-19, trial is not likely to conclude in near future and prolonged pre-trial detention being an anathema to the concept of liberty, this Court is inclined to extend the benefit of bail to the applicant.

Accordingly, without expressing any opinion on merits of the case, this application is allowed and it is directed that the applicant

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namely **Lucky alias Krishan Kumar** be released on bail on furnishing a personal bond in the sum of **Rs. 50,000/- (Rupees Fifty Thousand only)** with a solvent surety in the like amount to the satisfaction of the trial Court/committal Court for his appearance on the dates given by the concerned Court. The applicant shall also furnish a written undertaking that he will abide by the terms and conditions of various circulars, as well as, orders issued by the Central Government, State Government and local administration from time to time such as maintaining social distancing, physical distancing, hygiene etc. to avoid proliferation of Corona virus.

It is made clear that benefit of bail shall be extended to the applicant only on depositing an amount of **Rs.10,000/- (Rupees ten thousand only)** in the Prime Minister Citizen Assistance and Relief in Emergency Situation Fund (PM Cares Fund). The applicant shall submit an attested copy of its receipt before the concerning Court for keeping the same on record of the case.

This order will remain operative subject to compliance of the following conditions by the applicant :-

1. The applicant shall install **Aarogya Setu App** (if not already installed) in his mobile phone.
2. The applicant will comply with all the terms and conditions of the bond executed by him;
3. The applicant will cooperate in the investigation/trial, as the case may be;
4. The applicant will not indulge in extending inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade

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him/her from disclosing such facts to the Court or to the Police Officer, as the case may be;

5. The applicant will not seek unnecessary adjournments during the trial;
6. The applicant will not leave India without previous permission of the trial Court/Investigating Officer, as the case may be; and
- 7. If the applicant commits any offence while on bail, this order shall automatically stand cancelled without reference to the Court.**

Learned counsel for the State is directed to send an e-copy of this order to the Station House Officer of the concerned Police Station for information and necessary action.

E- copy of this order be sent to the trial Court concerned for compliance, if possible, by the office of this Court.

Certified copy/e-copy as per rules/directions.

(S.A.Dharmadhikari)
Judge

(and)