

HIGH COURT OF MADHYA PRADESH,
BENCH AT GWALIOR
M.Cr.C. No.29692/2021
(Surendra Vs. The State of Madhya Pradesh & another)
(1)

Gwalior, dated : 18/6/2021

Shri Deepak Shrivastava, Advocate for the applicant.

Shri Purushottam Tanwar, Panel Lawyer for the respondents/State.

Heard through Video Conferencing.

I.A. No.17747/2021, an application for urgent hearing is allowed.

Case diary is available.

The applicant has filed this first application under section 439 of the Cr.P.C. for grant of bail.

The applicant has been arrested by Police Station Kotwali, Ashoknagar in connection with Crime No.743/2020 registered in relation to the offences punishable under sections 363, 366A, 376(3), 506 of the IPC and 5(M)/6 of the POCSO Act.

Prosecution story, in short, is that on 2/12/2020, a report was lodged that the prosecutrix, who is aged about 19 years, had left the home of the complainant without informing him.

Learned counsel for the applicant submits that applicant has falsely been implicated in the matter. He is in custody since 3/02/2021. It is submitted that charge sheet has been filed and no further custodial interrogation is required in the matter. Prosecutrix in her statements recorded under sections 161 and 164 of the Cr.P.C. has deposed that she had left her home on her own volition and the

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applicant is not involved in her kidnapping nor he had any sexual intercourse with her. As per the MLC also, the doctor has stated that there is no physical or sexual assault. No injury over private parts was seen. However, definite opinion could only be given after FSL report. Learned counsel for the applicant further submitted that in view of COVID-19 outbreak, detention of applicant in already congested prison may be detrimental. There is no likelihood of his absconsion or tampering with the prosecution evidence and the applicant is ready to abide by the terms and conditions as may be imposed. With the aforesaid submissions, prayer for grant of bail is made out.

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 the FSL report is awaited, therefore, at this stage the applicant may not be enlarged on bail.

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

Considering the facts and circumstances of the case coupled with the fact that owing to COVID-19 outbreak, 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.

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

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 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; and
6. The applicant will not leave India without previous permission of the trial Court/Investigating Officer, as the case may be.

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7. If the applicant commits any offence while on bail, this order shall automatically stand cancelled without reference to the Court.

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)