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THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.45199/2021
Nandu @ Nandlal vs. State of MP

Gwalior, Dated : 16-09-2021

Shri Dharendra Singh, counsel for the applicant.

Shri A.K. Nirankari, counsel for the State.

Case diary is available.

This second application under Section 439 of Cr.P.C. has been filed for grant of bail. The first application was dismissed by order dated 20.01.2021 passed in M.Cr.C. No.2109/2021.

The applicant has been arrested on 24.12.2020 in connection with Crime No. 43/2020 registered at Police Station Piprai Distt. Ashok Nagar for offence under Sections 363, 366 (A), 376, 376 (2) (n) of IPC and Section 5 (1), 5 (j) (ii)/6 of POCSO Act.

It is submitted by the counsel for the applicant, that according to the prosecution case, the prosecutrix eloped with applicant and at that time she was near about 17 years of age. Although the charges were framed on 07.04.2021 but the witnesses are not appearing. From the order sheet dated 21.06.2021, it is clear that even the summons were not issued and accordingly due to the fault on the part of the court, the applicant is languishing in jail.

Per contra, application is vehemently opposed by counsel for State. It is submitted that not only the applicant had raped a girl who was minor but also the DNA test report also confirms the commission

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of rape.

Heard learned counsel for parties.

From order dated 21.06.2021, it is clear that the summons were not issued. In order dated 12.08.2021, it is not mentioned as to whether the summons were issued or not. However, there is no endorsement on the order sheet to the effect that the summons were ever issued.

Under these circumstances, the trial Court is directed to immediately issue summons to the witnesses so that their evidence can be recorded.

Let a copy of this order be filed by the applicant before the trial Court for necessary information and compliance.

With aforesaid observation, the application is **dismissed as withdrawn** with liberty to the applicant to revive the prayer after examination of prosecutrix.

(G.S. Ahluwalia)
Judge

Aman