

THE HIGH COURT OF MADHYA PRADESH
MCRC No. 50438/2021
(BHAGWATI BAI KUSHWAH @ BHAGO @ BHAGA Vs STATE OF MADHYA
PRADESH AND ANOTHER)

Gwalior, Dated : 03/12/2021

Shri S.K. Mishra, Counsel for applicant.

Shri Abhishek Sharma, Counsel for State.

Case diary is available.

In compliance to order dated 10.11.2021, the Collector, District Shivpuri has filed his affidavit and has stated therein that no compensation has been paid to the prosecutrix.

This is second application filed under Section 439 of Cr.P.C. for grant of bail. The first bail application was dismissed by order dated 26.03.2021 passed in M.Cr.C. No.15209/2021 as withdrawn.

The applicant has been arrested on 03.03.2021 in connection with Crime No.05/2021 registered by Police Station Narwar, District Shivpuri for offence punishable under Sections 376 (1) (4), 363, 506, 313, 120, 376 (2) (h), 328 of IPC and Sections 17, 3/4, 5/6 of POCSO Act.

It is submitted by Counsel for the applicant that according to the prosecution case, the applicant who is *Bua* of the prosecutrix was not well, and therefore, co-accused persons took the prosecutrix to the house of applicant for nursing purposes. It is alleged that co-accused persons committed rape on prosecutrix. It is submitted by Counsel for applicant that now the prosecutrix has turned hostile. The applicant is a lady and she is in jail since 03.03.2021. The trial is likely to take

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sufficiently long time and there is no possibility of her absconding or tampering with prosecution case.

Per contra, the application is vehemently opposed by Counsel for the respondent/State. It is submitted that as per FSL report, human sperm was found on the incriminating articles of the prosecutrix, and in the light of judgment passed by Supreme Court in the case of **Hemudan Nanbha Gadhvi vs. State of Gujarat** reported in (2019) 17 SCC 523, an accused can be convicted with the help of circumstantial and forensic/scientific evidence also. It is further submitted that it is true that the prosecutrix has not supported the prosecution case but it appears that either she had lodged the false report or she has not narrated the truth before the trial Court, therefore, she is liable to be prosecuted.

In reply, it is submitted by Counsel for applicant that co-accused Dhruv has already been granted bail by the Co-ordinate Bench of this Court by order dated 23.08.2021 passed in M.Cr.C. No.35027/2021, against whom there was an allegation of commission of rape.

Heard the learned Counsel for the parties.

So far as contention of Counsel for the State that prosecutrix is liable to be prosecuted for giving false evidence is concerned, it is directed that while deciding the trial, the Trial Court shall positively

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consider this aspect also.

Considering the fact that applicant is a lady and she is in jail for the last eight months and the prosecutrix has turned hostile and without commenting on the merits of the case, the application is **allowed**. It is directed that the applicant be released on bail on furnishing a personal bond in the sum of **Rs.1,00,000/- (Rupees One Lac Only)** with one surety in the like amount to the satisfaction of the Trial Court/Committal Court to appear before the Court on the dates given by the concerned Court.

This order shall remain effective till the end of the trial but in case of bail jump, it shall become ineffective.

In the light of the judgment passed by the Supreme Court in the case of **Aparna Bhat & Ors. vs. State of M.P. passed on 18/3/2021 in Criminal Appeal No.329/2021**, the intimation regarding grant of bail be sent to the complainant.

Certified copy as per rule.

(G.S. Ahluwalia)
Judge

Aman