

THE HIGH COURT OF MADHYA PRADESH
MCRC No. 59608/2021
(BHANWARLAL Vs THE STATE OF MADHYA PRADESH AND ANOTHER)

Gwalior, Dated : 06/12/2021

Shri Vibhor Sahu, Counsel for applicant.

Shri C.P. Singh, Counsel for State.

Case diary is available.

This is first application filed under Section 439 of Cr.P.C. for grant of bail.

The applicant has been arrested on 19.10.2021 in connection with Crime No.255/2021 registered by Police Station Piprai, District Ashok Nagar (M.P.) for offence punishable under Sections 363, 366-A, 370 (4), 376 (3), 120, 34 of IPC and Section 3/4 (2) of PCOSO Act, and Sections 3 (2) (v), 3 (2) (v-a), 3 (1) (w-ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

It is submitted by Counsel for the applicant that according to the prosecution case, co-accused Rekha kidnapped a minor girl aged about 14 years and 11 months and handed over to the appellant and co-accused Kailash who took her to Rajasthan. She was detained by all the three persons in Rajasthan for 3 to 4 days and she was raped by co-accused Kailash. It is submitted that the statement of prosecutrix under Section 164 of Cr.P.C was also recorded in which she has not disclosed the name of applicant but she has merely stated that two unknown persons were also accompanying the co-accused persons. It is submitted that although in the FIR as well as in the statement

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recorded under Section 161 of Cr.P.C, the prosecutrix has disclosed the name of applicant as one of the kidnapper but as the name of applicant has not been mentioned in the statement recorded under Section 164 of Cr.P.C, therefore, it was incumbent upon the prosecution to get a TIP conducted in order to establish the identity of applicant beyond reasonable doubt. It is further submitted that although a *Toofan* four wheeler has been seized from the possession of applicant but the said vehicle has not been got identified from the prosecutrix and even the prosecutrix has not given the detail of the vehicle whether it was *Toofan* four wheeler or was any other vehicle.

Per contra, the application is opposed by Counsel for the respondent/State. It is submitted that it is true that in the statement under Section 164 of Cr.P.C, the prosecutrix has not named the applicant but she has specifically stated that the other kidnappers were accompanied by two more persons. The statements recorded under Section 161 and 164 of Cr.P.C can be used for omission and contradiction purposes and it is for the Trial Court to adjudicate the effect of non-mention of name of applicant in the statement recorded under Section 164 of Cr.P.C. It is further submitted that it is true that there is no allegation of rape against the applicant, but the applicant is alleged to have kidnapped the prosecutrix and took her to Rajasthan where she was raped by co-accused Kailash. The prosecutrix was

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recovered from the bus stand, Jhalawar (Rajasthan). She is minor aged about 14 years and 11 months.

Considered the submissions made by Counsel for the parties.

In view of allegations made against the applicant, no case is made out for grant of bail.

The application fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge

Aman