

THE HIGH COURT OF MADHYA PRADESH
MCRC No.60320/2021
(SANJAY RAWAT & ANR. VS. STATE OF M.P. & ANR.)

Gwalior, Dated : 15/03/2022

Shri Vijay Jha, learned counsel for the applicants.

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

Case diary is available.

This third repeat application under Section 439 of Cr.P.C. has been filed for grant of bail. Second bail application of the applicant No.1 Sanjay Rawat was dismissed by order dated 22/07/2021 passed in MCRC No.35769/2021 and second bail application of the applicant No.2 Santosh Rawat was dismissed by order dated 22/07/2021 passed in MCRC No.35779/2021.

The applicants have been arrested on 13/01/2021 in connection with Crime No.453/2020 registered at Police Station Karera, District Shivpuri for offence under Sections 363, 366 and 376-D of IPC and Section 5/6 of the POCSO Act.

It is submitted by the counsel for the applicants that the prosecutrix has turned hostile and she has not supported the prosecution case. Accordingly, this Court by order dated 04/01/2022 had directed the State counsel to obtain the DNA test report.

The DNA test report has been received, according to which the DNA profile of applicant No.1 Sanjay Rawat was not found in any of the incriminating article of the prosecutrix whereas, the DNA profile of applicant No.2 Santosh Rawat was found in the incriminating

THE HIGH COURT OF MADHYA PRADESH
MCRC No.60320/2021
(SANJAY RAWAT & ANR. VS. STATE OF M.P. & ANR.)

articles of the prosecutrix. Accordingly, the counsel for the applicants seeks permission of this Court to withdraw this application on behalf of applicant No.2 Santosh Rawat.

In view of the judgment passed by the Supreme Court in the case of **Hemudan Nanbha Gadhvi vs. State of Gujarat**, passed on **28.09.2018** in **Criminal Appeal No.913/2016**, the prayer for withdrawal of the bail application is hereby allowed and the bail filed by **applicant No.2 Santosh Rawat is dismissed as withdrawn.**

So far as the case of applicant No.1 Sanjay Rawat is concerned, it is submitted by the counsel for the State that it is true that the prosecutrix has turned hostile and no DNA profile was detected. It is submitted that the date of birth of the prosecutrix is 12/03/2004 and the date of incident is 11/08/2020. Thus, it is clear that she was minor. It is submitted that since, the prosecutrix has not narrated the truth before the Court, therefore, she is liable to be prosecuted.

Per contra, the counsel for the applicant is vehemently opposed the prayer made by counsel for the State. It is submitted that in view of the Section 22 of The Protection of Children from Sexual Offences Act, 2012 (in short, “the POCSO Act”), the prosecutrix who according to the prosecution was a minor girl cannot be prosecuted and she cannot be punished for making false complaint.

Heard the learned counsel for the parties on this issue.

THE HIGH COURT OF MADHYA PRADESH
MCRC No.60320/2021
(SANJAY RAWAT & ANR. VS. STATE OF M.P. & ANR.)

Section 22(2) of the POCSO Act reads as under:-

“**22(2)**. Where a false complaint has been made or false information has been provided by a child, no punishment shall be imposed on such child.”

The contention of the counsel for the State is that the prosecutrix has not narrated the truth before the Trial Court because she had turned hostile and in respect of both the accused i.e. Sanjay Rawat and Santosh Rawat, but in the DNA report the incriminating articles of the prosecutrix were found containing the DNA profile of applicant No.2 Santosh Rawat and thus, it is not a case of giving false information or making false complaint, but it is a case of not deposing truth before the Trial Court, therefore, she can be prosecuted, even if she is a minor.

If, the facts of the present case are considered, then it is clear that in view of the presence of DNA profile of applicant No.2 Santosh Rawat, the prosecutrix had not deposed the truth before the Trial Court and, therefore, it is not a case of false complaint or giving a false information. False complaint or false information would necessarily mean the information given to the police and not the evidence given by her in the Trial Court.

Under these circumstances, the Trial Court is directed to decide as to whether the prosecution of the prosecutrix would be desirable or

THE HIGH COURT OF MADHYA PRADESH
MCRC No.60320/2021
(SANJAY RAWAT & ANR. VS. STATE OF M.P. & ANR.)

not.

Let this question be addressed at the time of final disposal of the Trial.

In view of the fact that the prosecutrix has turned hostile qua the applicant No.1 Sanjay Rawat and without commenting on the merits of the case, the application is **allowed**. It is directed that **applicant No.1 Sanjay Rawat** be released on bail on furnishing a personal bond in the sum of **Rs.1,00,000/- (Rupees One Lac)** 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 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 and others Vs. State of M.P.** Passed on **18.03.2021** in **Criminal Appeal No. 329/2021**, the intimation regarding grant of bail be sent to the complainant.

Accordingly, the bail application filed by **applicant No.1 Sanjay Rawat** is **allowed**.

Certified copy as per rules.

(G.S. Ahluwalia)
Judge