

The High Court of Madhya Pradesh

Misc. Cri. Case No. 3898/2022

(Lakhan Kirar vs. State of MP)

Gwalior dated 24.01.2022

Heard through Video Conferencing.

Shri Rajmani Bansal, learned counsel for the applicant.

Shri B.S.Gour, learned Public Prosecutor for the State.

This is **second** bail application under Section 439 Cr.P.C. filed on behalf of the applicant. First application (Misc. Cri. Case No. 54085/2021) was dismissed as withdrawn on 9.11.2021. The applicant is in custody since 25.09.2021 in connection with Crime No.10/2021 registered at P.S. Mahila Thana, District Guna (M.P.) for the offence punishable under Sections 376(D), 376(2)(n), 323, 506 IPC.

As per story of the prosecution, the complainant is the wife of co-accused Sonu married in the year 2013. As per FIR, Sonu is a man of loose virtues and of bad habits. He is alcoholic. After consumption of liquor he used to turn boisterous and violent and assaulted the complainant on many occasions. It is alleged that while Sonu was away, present applicant Lakhan taking advantage of loneliness of the complainant, entered her house and sexually abused her. Thereafter, when Sonu came back, she reported him the incident. Instead of cooperating with her and helping to register the complaint he had beaten the complainant and deserted her. Thereafter, when she came back, Sonu and Lakhan both committed rape upon her. With aforesaid allegations, FIR has been lodged.

Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the offence. Investigation is complete and he is no more required for custodial investigation. He has already suffered jail incarceration since 25.09.2021. On merits and in the changed circumstances, the complainant has turned hostile

in her depositions before the Court and belied the story of prosecution. The applicant is a poor person. Due to his jail incarceration his family is in penury and on the verge of starvation. Co-accused Sonu has already been enlarged on bail by this Court vide order dated 17.01.2022 in Misc.Cri.Case No. 63606/2021. Looking to the Covid-19 (3rd wave) situation, trial is not likely to conclude early in the near future. Under such circumstances, the prayer for grant of bail may be considered on such terms and conditions as this Court deems fit and proper.

Per contra, learned Public Prosecutor opposes the bail application supporting the order impugned with submissions that the complainant in FIR and her statement under Section 161 of CrPC as well as before the Court under Section 164 CrPC, has supported the story of prosecution with specific allegations against each of the co-accused persons. However, she has turned hostile during her Court depositions. Nevertheless, regard being had to the peculiarity of the facts and circumstances, no exception can be taken in enlargement of the applicant on bail.

Upon hearing learned counsel for the parties, though this Court refrains from commenting anything upon rival contentions touching the merits of the case, regard being had to the fact that the applicant is in custody since 25.09.2021, he is not required for custodial investigation, in the obtaining facts and circumstances and due to Covid-19 (3rd wave) pandemic, the possibility of delay in conclusion of trial cannot be ruled out. Besides, co-accused Sonu has already been enlarged on bail by this Court vide order dated 17.01.2022 in Misc.Cri.Case No. 63606/2021, hence the present applicant is held entitled for enlargement on bail but with stringent conditions.

Consequently, the application of the applicant filed under Section 439 of the Criminal Procedure Code, 1973, is hereby allowed.

It is directed that the applicant be released on bail on furnishing personal bond in the sum of **Rs.1,50,000/- (Rupees One Lac Fifty Thousand only)** with one solvent surety in the like amount to the satisfaction of the learned Trial Court and on the condition that he shall remain present before the Court concerned during trial and also comply with the conditions enumerated under Section 437 (3) of Criminal Procedure Code, 1973 with following further conditions:

- (i) **the applicant shall mark his attendance before the concerned police station on 2nd and 4th Saturday every month between 10:00 a.m. to 12:00 noon;**
- (ii) the applicant shall abide by the terms and conditions of various circulars and orders issued by the Government of India and the State Government as well as the local administration from time-to-time in the matter of maintaining social distancing, physical distancing, hygiene, etc., to avoid proliferation of Novel Corona virus (COVID-19);
- (iii) the concerned jail authorities are directed that before releasing the applicant, the medical examination of the applicant be conducted through the jail doctor and if it is *prima facie* found that he is having any symptoms of COVID-19, then the consequential follow up action or any further test required, be undertaken immediately. If not, the applicant shall be released on bail in terms of the conditions imposed in this order;
- (iv) on violation of conditions, State is free to apply for cancellation of bail;
- (v) in future, if the applicant is found to be involved in such nature of cases or any other similar criminal cases or misuse the bail granted by this Court, this bail order shall stand cancelled automatically.

Learned Public Prosecutor is directed to send an e-copy of this order to all the concerned including the concerned Station House Officer of the Police Station for information and necessary action.

E-certified copy as per rules.

(yog)

(Rohit Arya)
Judge