

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

**BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

ON THE 30th OF NOVEMBER, 2022

MISC. CRIMINAL CASE No. 52194 of 2022

BETWEEN:-

**ABHISHEK KUSHWAH S/O SHRI BABULAL KUSHWAH,
AGED ABOUT 21 YEARS, OCCUPATION: LABOURER R/O
VILLAGE PARSOORA POLICE STATION TYONGA
(MADHYA PRADESH)**

.....APPLICANT

(BY MR. SATYA PRAKASH SINGH - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH STATION
HOUSE OFFICER THROUGH POLICE STATION
TYONDA (MADHYA PRADESH)**
- 2. THE VICTIM (A MINOR BOY) THROUGH STATION
HOUSE OFFICER POLICE STATION TYONDA
VIDISHA (MADHYA PRADESH)**

.....RESPONDENTS

(BY MR. C.P. SINGH - PANEL LAWYER)

.....

*This application coming on for hearing this day, the court passed the
following:*

ORDER

Case diary is available.

This third repeat application under Section 439 of Cr.P.C. has been filed for grant of bail. The second application was dismissed on merit by order dated 11.05.2022 passed in MCRC No.23585/2022.

The applicant has been arrested on 19.09.2021 in connection with Crime No.251/2021 registered at Police Station Tyonda, District Vidisha for offence

under Section 377 of IPC and Section 5/6 of Protection of Children from Sexual Offences Act, 2012.

It is submitted by learned counsel for the applicant that victim has turned hostile and has not supported the prosecution case. By order dated 10.11.2022, counsel for the State was directed to produce DNA test report. The DNA test report has been filed on 24.11.2022 and according to which, the DNA profile found in anal slide of the victim is different from DNA profile of the applicant. However, it is submitted that it appears that either the witnesses had given a false information to the police or they have not narrated the truth before the Court, therefore, they are liable to be prosecuted.

So far as the question of prosecution of the witnesses is concerned, it is directed that the Trial Court while deciding the trial shall address on this issue also and shall pass a specific order as to whether the prosecution of the witnesses is warranted or not ?

In view of the fact that victim has turned hostile and DNA report exonerates the applicant from commission of offence, therefore, 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.50,000/- (Rupees Fifty Thousand)** 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.

Certified copy as per rules.

(G.S. AHLUWALIA)
JUDGE

bj/-

