

High Court of Madhya Pradesh, Jabalpur
Bench at Indore

Criminal Appeal No.3439/2020

(Roshan Shah s/o Sawan Shabbir

Versus

The State of Madhya Pradesh
through Police Station Rajpur, District Barwani (MP)

AND

VICTIM / PROSECUTRIX)

Indore, Dated 15.09.2020

Mr. Akshat Pahadia, learned counsel for the appellant.

Mr. Sameer Verma, learned Panel Lawyer for the respondent / State of Madhya Pradesh.

None appears for the prosecutrix / complainant / objector.

They are heard. Perused the case diary / challan papers.

The appellant has preferred this repeat appeal under Section 14 (A) (2) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989 (as amended by Act of 2015) read with Section 439 of the Code of Criminal Procedure, 1973, feeling aggrieved by order dated 02.06.2020 passed by learned Special Judge (under SC / ST Act), Barwani (MP) in **Special ST** / Bail Application No.22/2018, whereby the prayer for grant of regular bail has been declined.

Appellant has been arrested on 30.08.2018 in connection with Crime No.315/2018 registered at Police Station Rajpur, District Barwani (MP) for offence punishable under Sections 363, 366-A, 376 (2)

(1) and 376 (d) of the Indian Penal Code, 1860, under Section 3 read with Section 4 of the Protection of Children from Sexual Offence Act, 2012 and also under Sections 3 (1) (w) (i) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989.

As per prosecution case, on the basis of allegations made by the prosecutrix (who belongs to SC / ST Category) regarding abduction, inducement and commission of rape, the present case has been registered against the appellant.

Learned counsel for the appellant has submitted that the appellant is innocent and he has falsely been implicated in the present crime. It is further submitted that the prosecutrix and her father have already been examined before the trial Court on 30.04.2019; and from perusal of statement of the prosecutrix, it appears that she was having love affair with the appellant, due to which, father of the prosecutrix was annoyed with this relationship of her daughter with the appellant. Hence, he lodged the FIR. It is further submitted that from perusal of statement of father of the prosecutrix, it cannot be said that at the time of incident, the prosecutrix was minor. It is also submitted that the prosecutrix has exaggerated the story and there are material contradictions and omissions in her Court statement. The appellant is in custody since 30.08.2018. The

investigation is over and charge sheet has already been filed. Conclusion of the trial will take sufficiently long time. There is no possibility of his / her absconsion or tampering with the evidence, if enlarged on bail. Under these circumstances, learned counsel for the appellant prays for grant of bail to the appellant.

Learned Panel Lawyer for the respondent / State of Madhya Pradesh submits that no sufficient ground is made out for releasing the appellant on bail; hence the appeal filed by the appellant be dismissed.

After considering the facts and circumstances of the case and the arguments advanced by learned counsel for the parties so also looking to the statement of the prosecutrix in which she has made specific allegation against the appellant regarding commission of rape in her examination-in-chief and detail appreciation of evidence on merits is not permissible while deciding bail application of an accused, hence, the present criminal appeal filed by the appellant has no merits.

Accordingly, Criminal Appeal No.3439/2020 is hereby dismissed.

(S.K. Awasthi)
Judge