

High Court of Madhya Pradesh, Jabalpur
Bench at Indore

Miscellaneous Criminal Case No.30415/2021

(Altaf s/o Sharif Khumani

Versus

The State of Madhya Pradesh)

Indore, Dated 03.08.2021

Hearing through **Video Conferencing**.

Shri Thakur Lakhan Singh Chandel, learned counsel for the applicant.

Shri Shrey Raj Saxena, learned Deputy Advocate General for the respondent / State of Madhya Pradesh.

Shri Anendra Singh Parihar, learned counsel for the objector / complainant / prosecutrix.

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

This is the applicant's **first** bail application under Section 439 of Criminal Procedure Code, 1973. He is implicated in connection with Crime No.138/2021 registered at Police Station Sadar Bazar, Indore District Indore (MP) for offence punishable under Sections 376 (2) (N) and 420 of Indian Penal Code, 1860.

The applicant is in custody since 20.04.2021.

The allegation against the applicant is that he committed rape on the prosecutrix on the pretext of marriage. The date of incident is said to be 10.04.2021.

Counsel for the applicant has submitted that the charge sheet has already been filed; and the charges have also been framed, however, the final conclusion of the trial is likely to take sufficiently

long time.

Counsel has further submitted that the applicant has been falsely implicated by the prosecutrix, who is in the habit of making such false allegations to gain undue advantage from it, as on earlier occasions also the prosecutrix has made false allegation against other persons wherein it is alleged that these persons have also committed rape on her. Counsel has also brought on record some documents to buttress his submissions. It is submitted that in the present case, the prosecutrix has mentioned her name as "A" whereas in the earlier cases she has used her name as "B".

The attention of this Court has been drawn to judgment dated **31.07.2017** (Annexure A/2) passed by 5th Additional Sessions Judge, Indore (MP) in **Sessions Trial No.759/2016 (The State of Madhya Pradesh v. Nazib Khan s/o Sharif Khan)** wherein also, it is alleged by the prosecutrix that she was sexually exploited by the said accused Nazib Khan on the pretext of marriage. In the said case, as the prosecutrix did not support the case of the prosecution, the said accused was acquitted.

Counsel has also drawn the attention of this Court to second case registered as Crime No.789/2017 against the same accused Nazib Khan under Section 377 of IPC also, as according to the counsel, when accused Nazib Khan was acquitted in the case under Section 376 of IPC on 31.07.2017, he refused to pay the requisite amount to

the prosecutrix; and hence, she again implicated him in a case under Section 377 of IPC (Annexure A/3) and this case is still pending against him.

Counsel has also drawn the attention of this Court to another case u/s.376 of IPC which was registered by the prosecutrix against one Sourabh s/o Ghanshyam Verma, who has already been acquitted vide judgment dated **03.05.2016** (Annexure A/4 from page 290 to 291) passed by 13th Additional Sessions Judge, Indore (MP) in **Sessions Trial No.1085/2015 (The State of Madhya Pradesh v. Sourabh s/o Ghanshyam Verma)**, again after the prosecutrix did not support the case of the prosecution.

Counsel has also submitted that similar other allegations have also been levelled by the prosecutrix against other persons as well but the complete record of which is not available, but regarding which a news was also published in newspaper in the year 2017 (Annexure A/5).

Counsel has submitted that in the present case, the prosecutrix had also demanded a sum of Rs.4,00,000/- (rupees four lakh) from the applicant and she had approached the applicant in the jail itself and to prove this fact, he has also filed an application under Section 91 of the Code of Criminal Procedure, 1973 in the present bail application; and in reply, the respondent / State has admitted that the prosecutrix had gone to meet the applicant by her other name "B", which she uses as

her alias.

Counsel has further submitted that the prosecutrix has also obtained a Vakalatnama of the applicant on the pretext that she would get him out from the jail, if he agrees to pay a sum of Rs.4,00,000/- (rupees four lakh) to her; and the record of her obtaining the Vakalatnama from the applicant must be in the Office of the Jail Authorities, however, the same is not accepted in the reply filed by the State. Thus, counsel has submitted that the applicant is being blackmailed by the prosecutrix to pay a sum of Rs.4,00,000/- (rupees four lakh), so that she can get him out of the Jail. Thus, counsel has submitted that under these circumstances, the applicant be released on bail.

Shri Shrey Raj Saxena, learned Dy. Advocate General for the respondent / State, on the other hand, has opposed the prayer and it is submitted that in the statement recorded under Section 164 of the Code of Criminal Procedure, the prosecutrix has clearly leveled allegations against the applicant that he raped her on the pretext of marriage.

So far as the visit of the prosecutrix in jail is concerned, Shri Saxena has fairly admitted that as per the jail record, the prosecutrix had met the applicant in jail on 16.06.2021 in the name of "B", which is not the actual name of the prosecutrix in the present case. However, her Aadhar Card (Annexure A/6) verifies the same.

However, counsel has submitted that as per the reply filed by the Jail Authorities, Central Jail, Indore under the signatures of Usha Panwar, Sub Inspector, Police Station Sadar Bazar, Indore (MP), there is no reference of any *vakalatnama* being signed by the applicant.

Shri Anendra Singh Parihar, learned counsel appearing for the objector / prosecutrix has also opposed the prayer. Regarding the visit of the prosecutrix to Jail, Shri Parihar has submitted that he has no instruction regarding the same.

On due consideration of the rival submissions and perusal of the case diary as also the documents placed on record by the counsel for the applicant, this Court is inclined to accept the contentions raised by the counsel for the applicant. It is rather intriguing, that the prosecutrix in the present case, who is also using another name in other cases, is subjected to rape for quite a few times and on one occasion, she has also alleged unnatural sexual offence against her by the same person Najib in whose case u/s.376, she has not supported the case of the prosecution regarding rape. In other case relating to Saurabh also she has not supported the case of the prosecution and has been declared as hostile. The visit of the prosecutrix to meet the applicant in jail is also very surprising and casts a shadow of doubt on the case of the prosecution.

Be that as it may, without adverting to the merits of the case, the application filed by the applicant is hereby ***allowed***. The applicant

is directed to be released on bail upon furnishing a personal bond in the sum of **Rs.25,000/- (rupees twenty five thousand)** with one solvent surety of the like amount to the satisfaction of the trial Court for his / her regular appearance before the trial Court during trial with a condition that he / she shall remain present before the court concerned during trial and shall also abide by the conditions enumerated under Section 437 (3) Criminal Procedure Code, 1973.

It is also observed that after his release on bail, if the applicant is found in any criminal activities, the present bail order shall stand automatically cancelled without further reference to this Court; and the State / prosecution will be free to arrest the accused in the present case also.

Since Shri Shrey Raj Saxena, learned Deputy Advocate General was not able to verify the factum of obtaining of vakalatnama by the prosecutrix from the present applicant in jail, he is hereby directed to submit a report in the Chamber within two weeks' time.

Application stands allowed with the aforesaid observations.

Certified copy as per rules.

(Subodh Abhyankar)
Judge