

The High Court Of Madhya Pradesh

MCRC-38371-2021

(BHARAT Vs THE STATE OF MADHYA PRADESH)

Indore, Dated : 03-08-2021

Heard through Video Conferencing.

Shri Ashish Gupta, learned counsel for the applicant. .

Shri Jayesh Vyas PL for the respondent/State.

This is **first** application under Section 439 of the Code of Criminal Procedure, 1973. The applicant is in Jail since 17/12/2020 in connection with Crime No. 379/2020 registered at P.S.-Jharda, District-Ujjain -(M.P.) for commission of offence punishable under Sections 363,366,376, 328, 376(2)(n),307 of IPC and sections 3, 4, 5(I), 6, 7, 8 of POCSO Act.

As per prosecution story, on dated 08/12/2020 a written information was given by C.H.C., Jharda to P.S. — Jharda that, prosecutrix has. consumed some poisonous substance, on which she was brought to C.H.C., Jharda by her family members. On 11/12/2020, prosecutrix's statement was recorded wherein she disclosed that on 07/12/2020, her parents and brother had gone out and she was alone at home with her niece. At around 11 O'clock the applicant knocked on the door. When prosecutrix refused to open the door, then applicant said that her brother was also with him, on which she peeped outside the door. At that time, the applicant grabbed her both hands and took her to a room, where the applicant forcefully committed rape upon her and gave her poisonous substance, which made her vomit and unconscious. When she regained consciousness, she was in hospital, where prosecutrix disclosed the whole incident to her parents. On the basis of the said allegations, instant F.I.R. was lodged against the applicant.

Learned counsel for the applicant contended that applicant is innocent and has been falsely implicated in this offence. There is no legal evidence to connect him with the aforementioned crime. In the

instant case, statements of the prosecutrix and her parents have been recorded before the trial Court, where they have not supported the prosecution story. In light of the said statements, it is clear that the applicant has not committed any offence. There is no genuine document on record, which shows that on the date of the incident, the prosecutrix was minor. Learned Court below has erred in not appreciating the fact that the applicant has been implicated as accused merely out of the fact that the friendship of the applicant with the prosecutrix was not acceptable to the father of prosecutrix. Final conclusion of the trial will likely to take sufficient long time. The applicant is permanent resident of District- Ujjain. He is not having any criminal record. Under the above circumstances, prayer for grant of bail may be considered on such terms and conditions, as this Court deems fit and proper.

Learned PL for respondent – State opposes the bail application and prays for its rejection by contending that the prosecutrix was minor at the time of the incident.

From perusal of the certified copies of the statements of the prosecutrix PW-1, her mother Hemubai PW-2 and Madallal PW_3, it reveals that all the three witnesses have turned hostile and did not support the prosecution case. The prosecutrix, in her statement, categorically stated that she was 20 years old and as per Adhar Card, her date of birth is 09/08/2001. Her mother Hemubai and father Madalal also admit that at the time of the incident, the prosecutrix was 20 years old. All the three witnesses have specifically mentioned that the present applicant did not commit rape upon the prosecutrix.

Considering the facts and circumstances of the case and nature of allegation as also the fact that the prosecutrix and her parents have turned hostile before the trial Court and did not mention anything regarding aforementioned crime against the applicant, this Court is of the considered opinion that it would be proper to release the applicant on bail.

Accordingly, without commending upon the merit of the case, present bail application is allowed and it is directed that applicant **Bharat S/o Sevaram** be released on bail on his furnishing personal bonds in the sum of **Rs.70,000/- (Rs. Seventy thousand only)** with one solvent surety in the like amount to the satisfaction of the trial Court for his appearance before the trial Court, as and when required. He shall abide by the conditions enumerated u/S. 437(3) Cr.P.C.,

Before releasing the applicant from the custody, the Jail Authorities are directed to medically examine him in order to rule out the possibility of Covid-19 infections and shall comply with the directions issued by the Hon'ble Apex Court in W.P.No. 01/2020.

Certified copy, as per Rules.

(ANIL VERMA)
J U D G E

