

High Court of Madhya Pradesh, Jabalpur
Bench at Indore

Miscellaneous Criminal Case No.59647/2021

(Pawan s/o Premchand
Versus
The State of Madhya Pradesh
AND
VICTIM / PROSECUTRIX)

Indore, Dated 06.12.2021

Shri Nilesh J. Dave, learned counsel for the applicant.

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

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.231/2021 registered at Police Station Malhargarh, District Mandsaur (MP) for offence punishable under Sections 363, 376 (3), 376 (2) (N), 370, 370-A and 109 of Indian Penal Code, 1860, under Section 3/4 (2) and Sections 5 (L) and 5 (J) read with Section 6 of the Protection of Children from Sexual Offence Act, 2012.

The applicant is in custody since 22.09.2021.

The allegation against the applicant is one rape on the prosecutrix.

Learned Counsel for the applicant has submitted that the applicant has been falsely implicated in the case, as the prosecutrix has been examined in Court and has not supported the prosecution case and the copy of her deposition is placed on record. It is further

submitted that the prosecutrix was major at the time of the incident which was not disputed as she was a consenting party. It is further submitted that the applicant is in jail since 22.09.2021 and the final conclusion of the trial is likely to take sufficiently long time.

Counsel for the applicant has submitted that co-accused Kanhaiyalal s/o Prabhulal Bagri has already been granted bail by this Court in Miscellaneous Criminal Case 58711/2021 vide order dated 02.12.2021; and the case of the applicant on the same footings. In such circumstances, it is prayed that the applicant be released on bail.

Counsel for the respondent / State, on the other hand, has opposed the prayer.

Having considered the rival submissions and on perusal of the case diary as also the statement of the prosecutrix, this Court finds force with the contentions raised by the counsel for the applicant and the application deserves to be allowed.

Accordingly, without commenting on the merits of the case, the application filed by the applicant is **allowed**, maintaining parity with co-accused Kanhaiyalal. The applicant is directed to be released on bail upon furnishing a personal bond in the sum of **Rs.50,000/- (rupees fifty 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.

This order shall be effective till the end of the trial, however, in case of bail jump, it shall become ineffective.

Certified copy as per rules.

(Subodh Abhyankar)
Judge