

HIGH COURT OF MADHYA PRADESH: JABALPUR

Single Bench : Hon'ble Shri Justice Subodh Abhyankar

Miscellaneous Criminal Case No.18356 of 2018

Lalji Chaudhary

Vs.

The State of Madhya Pradesh

Present :

Shri A.K. Tiwari, Advocate for the applicant.

Shri Vaibhav Tiwari, Government Advocate for the respondent-State.

Miscellaneous Criminal Case No.17610 of 2018

Brijesh Jain

Vs.

The State of Madhya Pradesh

Present :

Shri Sourabh Singh Thakur, Advocate for the applicant.

Shri C.K. Mishra, Government Advocate for the respondent-State.

Miscellaneous Criminal Case No.19037 of 2018

Rajkumar Evane

Vs.

The State of Madhya Pradesh

Present :-

Shri Abhijeet Awasthi, Advocate for the applicant.

Shri Yogesh Dhande, Government Advocate for the respondent/State.

ORDER

(Passed on this the 21st day of June, 2018)

This common order shall govern the disposal of M.Cr.C. No.18356/2018; M.Cr.C. No.17610/2018; and M.Cr.C.

No.19037/2018 although all the cases are different and arise out of different crime numbers in different Districts however there is one feature common in all these cases and that is rape on the pretext or allurements of marriage. The Apex court in the case of *Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660*, has explained the consequences of rape in the following manner:-

“20. Rape is the most morally and physically reprehensible crime in a society, as it is an assault on the body, mind and privacy of the victim. While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim, and therefore a rape victim is placed on a higher pedestal than an injured witness. Rape is a crime against the entire society and violates the human rights of the victim. Being the most hated crime, rape tantamounts to a serious blow to the supreme honour of a woman, and offends both, her esteem and dignity. It causes psychological and physical harm to the victim, leaving upon her indelible marks.”

2. In the backdrop of the aforesaid observations by the Apex Court, the reason why all these cases in hand are being decided together is necessitated by the need felt by this Court to highlight the plurality of the cases of such nature flooding the courts now-a-days. Before making any observations on the subject in general, the aforesaid cases are being decided on their merits as under:-

(I) **M.Cr.C. No.18356/2018**

This is the first bail application under Section 439 of Cr.P.C. filed by applicant **Lalji Chaudhary**, who is in custody since

18.03.2018 in connection with Crime No.103/2018 registered at Police Station Shahpura District Jabalpur for the offences punishable under Sections 376 and 506 of IPC.

The allegation against the present applicant is that he raped the prosecutrix on the pretext of marriage.

Learned counsel for the applicant has submitted that the applicant is aged about 22 years and no promise was ever made by the applicant who has been falsely implicated by the prosecutrix. It is further submitted that the applicant was apprehending such action by the prosecutrix, hence he has already lodged a report to the Additional Superintendent of Police, Jabalpur. Learned counsel further submits that the charge sheet has already been filed and the applicant is in custody since 18.03.2018.

Learned counsel for the State on the other hand has opposed the bail application and prayed for its rejection.

After hearing the learned counsel for the parties and having gone through the case diary, this Court is of the considered opinion that the applicant is liable to be released on bail, as the allegation of intercourse on the pretext of marriage can only be decided after the evidence is led by the parties, specially in the light of the judgment of the Hon'ble Apex Court in the case of **Deepak Gulati** (supra). Thus, without expressing any view on the merits of the case, the application filed under Section 439 of Cr.P.C. by applicant viz. **Lalji Chaudhary** is hereby allowed.

It is directed that the present applicant be released on bail on his furnishing a personal bond in the sum of **Rs.1,00,000/- (Rupees one lakh only)** with one solvent surety of the like amount to the satisfaction of the concerned C.J.M./Trial Court.

(II) **M.Cr.C. No.17610/2018**

This is the first bail application under Section 439 of Cr.P.C. filed by applicant **Brijesh Jain**, who is in custody since

18.02.2018 in connection with Crime No.59/2018 registered at Police Station Batiyagarh, District Damoh for the offences punishable under Sections 376, 506 and 323 of IPC.

The allegation against the present applicant is that he raped the prosecutrix on the pretext of marriage as the prosecutrix was a widow having two children but subsequently refused to honour his promise which led to lodging of the FIR by the prosecutrix.

Learned counsel for the applicant has submitted that the applicant is in jail since 18.02.2018. It is further submitted that no such promise was ever made by the applicant and he has been falsely implicated by the prosecutrix. It is further submitted that even otherwise, the sexual intercourse was purely consensual in nature and as such no case under Section 376 of IPC is made out against the applicant.

Learned counsel for the State on the other hand has opposed the bail application and has submitted that the applicant had exploited the prosecutrix knowing fully well that she was a widow and made false promise to her.

After hearing the learned counsel for the parties and having gone through the case diary, this Court is of the considered opinion that the applicant is liable to be released on bail, as the allegation of intercourse on the pretext of marriage can only be decided after the evidence is led by the parties, specially in the light of the judgment of the Hon'ble Apex Court in the case of **Deepak Gulati** (supra). Thus, without expressing any view on the merits of the case, the application filed under Section 439 of Cr.P.C. by applicant viz. **Brijesh Jain** is hereby allowed.

It is directed that the present applicant be released on bail on his furnishing a personal bond in the sum of **Rs.1,00,000/- (Rupees one lakh only)** with one solvent surety of the like amount to the satisfaction of the concerned C.J.M./Trial Court.

(III) **M.Cr.C. No.19037/2018**

This is the first bail application under Section 439 of Cr.P.C. filed by applicant **Rajkumar Evane**, who is in custody since 21.04.2018 in connection with Crime No.67/2018 registered at Police Station Kotwali Police Station, District Betul for the offences punishable under Sections 376 (2)(n) and 506 of IPC.

The allegation against the present applicant is that on 16.01.2018 he raped the prosecutrix on the pretext of marriage as both of them have already been engaged and since they were already engaged, the applicant took the advantage of the situation when he was alone with the prosecutrix and subsequently refused to marry on the ground of her being of loose character despite the fact that they were going to marry on 22.01.2018.

Learned counsel for the applicant has submitted that the applicant has been falsely implicated in the case as soon after their engagement he found that the prosecutrix's behavior was erratic and hence wanted to cancel the engagement which has led to filing of the aforesaid case against the applicant.

Learned counsel for the State on the other hand has opposed the bail application and prayed for its rejection.

After hearing the learned counsel for the parties and having gone through the case diary, this Court finds that the engagement was indeed performed between the applicant and the prosecutrix. In the considered opinion of this Court, the applicant is liable to be released on bail as he is incarcerated since 21.04.2018, as the allegation of intercourse on the pretext of marriage can only be decided after the evidence is led by the parties, specially in the light of the judgment of the Hon'ble Apex Court in the case of **Deepak Gulati** (supra). Thus, without expressing any view on the merits of the case, the application filed under Section 439 of Cr.P.C. by applicant viz. **Rajkumar Evane** is hereby allowed.

It is directed that the present applicant be released on bail on his furnishing a personal bond in the sum of **Rs.1,00,000/- (Rupees one lakh only)** with one solvent surety of the like amount to the satisfaction of the concerned C.J.M./Trial Court.

3. Having passed the aforesaid orders, it would be apt to observe here that in cases of rape on the pretext of marriage, the entire burden is shifted on the girl who is to face the consequences of her misdemeanour as any pre-marriage sexual intercourse is still a taboo in India. It is always argued that the girl has entered into the relationship for the fun of it only, projecting her to be wanton and promiscuous, which, in the considered opinion of this court, if considered on its face value, is equally true for the men and applies to them with equal force. But, while presuming the 'guilt' of a girl who has allegedly entered into a relationship, the boy appears to have been given a right to indulge in any licentious activity and exploit a girl/woman without consequences. It is not difficult to comprehend a situation where in a moment of weakness, a girl, who may be either rich or poor, educated or illiterate, on the pretext of marriage by the man in whom she believes and has posed her faith, may enter into a sexual relationship and once this is done, the boy is always free to take a 'U' turn and deny any assurance to which no other person is privy, leaving behind the girl to face all the ignominy. Unfortunately, despite having inherited a high moral value legacy and despite the Society being opening up more and more, the laws have not been able to keep up with its pace leading to the present situation where immorality and dishonesty are thriving. In the considered opinion of this court a man must know and face the consequences of his action while exploiting a girl/woman either on the allurements of marriage or otherwise, the time has come where the Parliament must address itself to the current situation and introducing the appropriate law to meet such situations and to curb

such instances which are rising at an alarming rate and have the tendency to pollute the society.

4. With the aforesaid observations, the applications stand disposed of.

5. Let a certified copy of this order be furnished to the office of the Advocate General as well as the office of the Assistant Solicitor General of India Shri J.K. Jain who are directed to convey this order to the Chief Secretary of the State of M.P. and the Home Secretary, Ministry of Home Affairs, Government of India or the Secretary, Ministry of Women & Child Development, New Delhi or the Secretary, Ministry of Law and Justice, New Delhi as the case may be for necessary action.

(Subodh Abhyankar)
Judge
21/06/2018

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