

The High Court of Madhya Pradesh

M.Cr.C.No.36954/2018

(Chhotu Yadav Vs. State of M.P.)

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Jabalpur, Dated : 16-11-2018

Shri Ashish Sinha, counsel for the applicant.

Shri A.N.Gupta, G.A., for the respondent/State.

Heard. Case diary is not available. Perused the copy of challan produced by the learned counsel for applicant.

This is first application filed under Section 439 of the Cr.P.C. for grant of bail to the applicant.

The applicant has been arrested in connection with Crime No.278/2018, registered at Police Station Sihora, District Jabalpur, for the offences punishable under Sections 363, 366, 376(2)(n) of IPC and section 4, 5(1) and 6 of POCSO Act.

It is alleged that on 25.6.2018 the prosecutrix Nagina aged about 11 years had disappeared with applicant Chhotu Yadav from the village Khirkadongri under the jurisdiction of Police Station Sihora, District Jabalpur. On that basis, a case of missing person and FIR of kidnapping from the lawful guardianship have been registered against the applicant. During the course of investigation, prosecutrix have been recovered on 27.6.2018. Her medical examination has taken place. The applicant has also been arrested. On the basis of statement of prosecutrix Nagina and her family members offence punishable under sections 366, 376(2) of IPC and section 4, 5 and 6 Of POCSO Act had been added in the already registered crime.

Learned counsel for applicant has submitted that he has not committed any crime. He has been implicated falsely on wrong information of the father of prosecutrix.

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The applicant is a young boy aged 20 years and is in judicial custody since 27.6.2018. He is a permanent resident of the address shown in the application and is ready to furnish adequate surety and shall abide by all the conditions that may be imposed by the Court. It is also submitted that the examination of prosecutrix Nagina (P.W.2) and her father Ram Milan (P.W.1) have taken place before the trial Court. They have not supported the prosecution case. On that ground it is submitted that the applicant is entitled to get the benefit of bail.

Learned Government Advocate for State has opposed the application for bail.

As mentioned above, prosecutrix has been recovered on 27.6.2018. Her statements under section 161 and 164 of Cr.P.C., have been recorded. In those statements prosecutrix and her father have alleged that applicant is the person who has not only kidnapped the prosecutrix, but also committed sexual intercourse, during the course when the prosecutrix was in the company of applicant. In the FIR the age of prosecutrix is shown to be 13 years, but in the recovery memo and statement the age of prosecutrix is mentioned as 11 years at the time of incident. It is pertinent to mention that the copy of admission register of school has been recovered during the course of investigation, in which date of birth of prosecutrix is shown as 10.6.2007. On that basis, on the date of her alleged kidnapping and later on sexual assault, which is said to have been committed by the applicant, her age seems to be 11 years.

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Applicant has filed the copy of statement of prosecutrix and her father. On going through the statements, it seems that they have not supported the prosecution case, but many of the witnesses are yet to be examined. Therefore, at this stage, after assessing the statement of prosecutrix and her father, it is not proper to draw any conclusion.

Looking to the overall facts and circumstances of the case, I am not inclined to grant bail to the applicant.

Accordingly, this M.Cr.C. is dismissed.

C.C. as per rules.

(MOHD. FAHIM ANWAR)

JUDGE

M.