

(2020) 06 MP CK 0043
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 3418 Of 2020

Abhishek Upadhyay

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 19-06-2020

Acts Referred:

Constitution Of India, 1950 — Article 21
Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(2)(Va), 3(1)(w)(i), 14A (2)
Code Of Criminal Procedure, 1973 — Section 164, 439
Indian Penal Code, 1860 — Section 363, 366, 376
Protection of Children from Sexual Offences Act, 2012 — Section 3, 4

Citation : (2020) 06 MP CK 0043

Hon'ble Judges : Vishal Mishra, J

Bench : Single Bench

Advocate : Atul Gupta, Rajesh Shukla

Judgement

In the wake of unprecedented and uncertain situation due to outbreak of the Novel Corona virus (COVID-19) and considering the advisories issued by the Government of India, this application has been heard and decided through video conferencing to maintain social distancing. The parties are being represented by the respective counsel through video conferencing, following the norms of social distancing/ physical distancing in letter and spirit.

Heard the learned counsel for the parties.

Present appeal has been filed under Section 14-A (2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter would be referred as "the Act") against the order dated 23.05.2020 passed by Special Sessions Judge (Atrocities) Gwalior whereby the bail application of the appellant under Section 439 of Cr.P.C has been rejected.

The appellant is in custody since 18.03.2020 in connection with Crime No.114/2020 registered at Police Station Hazira, District Gwalior for the offence

punishable under Sections 376, 363 & 366 of IPC and Section 3 (2) (Va)/ 3 (1) (w) (i) of the Atrocities Act and Section 3/4 of POSCO Act.

It is submitted by the counsel for the appellant that the appellant is in custody since 18.03.2020. The investigation is over in the matter and the charge sheet has been filed. He has drawn attention of this Court to the statement of the prosecutrix recorded under Section 164 of Cr.P.C. wherein she has not stated anything regarding commission of offence under Section 366 of IPC. It is submitted that girl is said to be a minor. But he has relied upon the judgment passed by the Supreme Court in the case of Kavita Chandrakant Lakhani Vs. State of Maharashtra and Another, reported in 2018 (6) SCC 644 and has stated that Hon'ble the Supreme Court has held that even in such circumstances, prosecutrix/girl has gone out of her own will then no offence under Section 366 of IPC is not made out. The appellant is ready to abide by all the terms and conditions which may be imposed by this court while considering the application for grant of bail. The applicant has shown his willingness to contribute an amount of Rs.10000/- towards the PM Care Fund. There is no possibility of his absconding or tampering with the prosecution case. Counsel for the appellant prays for grant of bail to the appellant.

Per contra, Dy. Advocate General for the State opposed the application stating that on the date of incident, the age of the girl was 16 year and six months. But he fairly submits that the investigation is over in the matter and charge sheet has been filed.

He could not dispute the factum of recording of statement under Section 164 of Cr.P.C. wherein she has not narrated regarding commission of rape on her.

The Hon'ble Supreme by order dated 23.03.2020 passed in the case of IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS in SUO MOTU W.P. (C) No.1/2020 has directed all the States to constitute a High Level Committee to consider the release of prisoners in order to decongest the prisons. The Supreme Court has observed as under :-

"The issue of overcrowding of prisons is a matter of serious concern particularly in the present context of the pandemic of Corona Virus (COVID - 19).

Having regard to the provisions of Article 21 of the Constitution of India, it has become imperative to ensure that the spread of the Corona Virus within the prisons is controlled. We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are under trial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.

It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate."

Considering the overall facts and circumstances of the case and considering the guidelines issued by the Hon'ble Supreme Court during this situation of COVID-19 pandemic scenario, this Court deems it appropriate to allow this application. The application is allowed.

The appellant is directed to be released on bail on furnishing his personal bonds in the sum of Rs.50,000,-(Rs. Fifty Thousand Only) with one solvent surety of the like amount to the satisfaction of the Investigation Officer/trial Court, as the case may be with submission of written undertaking and the appellant will abide by all terms and conditions of the different circulars, orders as well as guidelines issued by the Central Government, State Government as well as Local Administration for maintaining social distancing, hygiene etc to avoid Novel Corona Virus (COVID -19) pandemic and he will have to install Arogya Setu App, if not already installed.

This order will remain operative subject to compliance of the following conditions by the appellant :-

1. The appellant will comply with all the terms and conditions of the bond executed by him;
2. The appellant will cooperate in the investigation/trial, as the case may be;
3. The appellant will not indulge himself in extending inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Police Officer, as the case may be;
4. The appellant shall not commit an offence similar to the offence of which he is accused.
5. The appellant will not seek unnecessary adjournments during the trial; and
6. The appellant will not leave India without previous permission of the trial Court/Investigating Officer, as the case may be.
7. The appellant shall deposit Rs.10000/- in PM CARE Fund having Account Number : 2121PM20202, IFSC Code: SBIN0000691, SWIFT Code : SBININBB104, Name of Bank & Branch : State Bank of India, New Delhi Main Branch within seven days from today.
8. The appellant will inform the concerned S.H.O. of concerned Police Station about his residential address in the said area and it would be the duty of the Dy.

Advocate General to send E-copy of this order to SHO of concerned police station as well as Superintendent of Police, District Gwalior who shall inform the concerned SHO regarding the same.

Application stands allowed.

In view of the COVID-19, jail authorities are directed that before releasing the appellant, medical examination of appellant shall be undertaken by the jail doctor and on prima facie, if it is found that he is having the symptoms of COVID-19, then consequential follow up action including the isolation/quarantine or any test if required, be ensured, otherwise appellant shall be released immediately on bail and shall be given a pass or permit for movement to reach his place of residence.

E-copy of this order be provided to the appellant and E-copy of this order be sent to the trial Court concerned for compliance. It is made clear that E-copy of this order shall be treated as certified copy for practical purposes in respect of this order.