

(2024) 03 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 10189 Of 2024

Hero @ Irfan

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 07-03-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 164, 439
Indian Penal Code, 1860 — Section 34, 109, 120B, 193, 195, 196, 344, 348, 365, 366A, 376(D), 506
Protection Of Children From Sexual Offences Act, 2012 — Section 5, 6, 16, 17
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(2)(Va)

Citation : (2024) 03 MP CK 0007

Hon'ble Judges : Sunita Yadav, J

Bench : Single Bench

Advocate : Atul Gupta, Kuldeep Singh

Final Decision : Dismissed

Judgement

Sunita Yadav, J

This is the first application filed by the applicant under Section 439 of the Cr.P.C. for grant of bail relating to FIR No. 506 of 2022 registered at Police Station Sironj, District Vidisha (M.P.) for the offence under Sections 344, 348, 365, 366-A, 376(D), 109, 120-B, 193, 195, 196, 506/34 of IPC and Section 5 / 6 and 16/17 of POCSO Act and Section 3(2)(Va) of SC/ST Act.

Learned counsel for the applicant argued that the applicant is innocent and has been falsely implicated. Allegedly prosecutrix got missing on 19.11.2022 and on the same day FIR was lodged. Further submission is that prosecutrix got recovered on 20.12.2022 and her statements under Sections 161 and 164 of Cr.P.C. were recorded on the same day i.e. on 20.12.2022, however, in her statement she has not made any allegation against the present applicant. Even in her supplementary statement dated 22.12.2022 no allegation was made

against the present applicant in respect to sexual assault. It is further argued that in her statement under Section 164 of Cr.P.C. recorded on 06.04.2023, name of the present applicant has not been mentioned by the prosecutrix. Applicant has been arrayed as an accused only on the basis of memorandum/statement of co-accused- Farman. However, DNA report dated 15.01.2024 is not corroborative in respect to present applicant. Further submission is that after conclusion of investigation, charge-sheet has been filed and prosecutrix has been examined as PW/1, therefore, question of influencing the prosecutrix does not arise. TIP of applicant/accused is suspicious on the basis of evidence of prosecutrix in her cross examination. Under these circumstances, so also in light of the fact that he is in custody since 19.10.2023, he is entitled to get the benefit of regular bail. He is the permanent resident of District Vidisha (M.P.) having no criminal history and there is no possibility of his absconsion or tampering with the prosecution evidence. Hence, he prays for grant of bail to the applicant.

Per contra, learned counsel for the State vehemently opposed the bail application and prayed for its dismissal.

Heard learned counsel for the rival parties and perused the case diary available on record.

Considering the facts and circumstances of the case, but without expressing any opinion on merits of the case, this application is allowed and it is directed that the applicant be released on bail on furnishing a personal bond in the sum of Rs. 1,00,000 (Rupees One Lac Only) with one solvent surety in the like amount to the satisfaction of the trial Court/committal court.

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

- 1) The applicant will comply with all the terms and conditions of the bond executed by him;
- 2) The applicant will cooperate in the investigation/trial, as the case may be;
- 3) The applicant 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/her from disclosing such facts to the Court or to the Police Officer, as the case may be;
- 4) The applicant will not commit any other offence or will not repeat the offence in future;
- 5) The applicant will not seek unnecessary adjournments during the trial; and
- 6) The applicant will not leave India without previous permission of the trial Court/Investigating Officer, as the case may be.

Learned State counsel is directed to send an e-copy of this order to the Station House Officer of the concerned Police Station for information and necessary

action. E- copy of this order be sent to the trial Court concerned for compliance, if possible, by the office of this Court.

Certified copy as per rules.