

(2020) 12 MP CK 0170

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No.51582 Of 2020

Jai Shanker Tiwari

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 21-12-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 376, 454, 506

Citation : (2020) 12 MP CK 0170

Hon'ble Judges : Vishnu Pratap Singh Chauhan, J

Bench : Single Bench

Advocate : B.K. Upadhyay, Sanjeev Singh Parihar

Final Decision : Dismissed

Judgement

Vishnu Pratap Singh Chauhan, J

Heard on this fourth bail application filed by applicant under Section 439 of Code of Criminal Procedure for grant of bail.

The applicant is in custody since 28.11.2019 in connection with Crime No.556/2019 registered at Police Station-Dehat, District-Hoshangabad for the offence punishable under Sections 454, 376 and 506 of the IPC.

First application filed by the applicant was dismissed by this Court on merits vide order dated 08.01.2020 passed in M.Cr.C.No.51447/2019, second

application was also dismissed on merits vide order dated 24.02.2020 passed in M.Cr.C.No.7212/2020 and third bail application was dismissed vide

order dated 1.10.2020 passed in M.Cr.C. No.32514/2020 on merits.

Allegation against the applicant, in short, is that, on finding the prosecutrix alone at her house, the applicant entered in her house with an intention to

outrage her modesty and, thereafter, forcibly committed sexual intercourse with her. When husband of the prosecutrix arrived, the applicant fled away from the spot.

Learned counsel for the applicant submits that this fourth bail application has been filed on behalf of the applicant on the ground that the prosecutrix has been examined before the trial Court and she has not supported the case of the prosecution. A copy of deposition of the prosecutrix is filed along with this petition. Learned counsel for the applicant drew the attention of this Court to para 5 of cross-examination of the prosecutrix (PW-1) and submits that the prosecutrix was a consenting party and she reported the matter under the pressure of her husband. It is further submitted that the applicant is in judicial custody since 28.11.2019. In such circumstances, it is prayed that applicant be released on bail.

On the other hand, learned Panel Lawyer for the respondent/State has vehemently opposes the application.

Having heard both the learned counsel for the parties and on a perusal of the case diary and whole statement of the prosecutrix (PW-1), it is apparent that the prosecutrix in her examination-in-chief has categorically stated about the act of the applicant but, in cross-examination, she has stated that if her husband had not come, she would not have lodged the report.

Considering the fact that all the previous three bail applications of the applicant were dismissed by this Court on merits and the learned trial Court has started recording the prosecution's evidence, this Court is not inclined to take a different view as taken in previous orders while dismissing the previous applications of the applicant.

Consequently, this fourth bail application filed by applicant Jai Shankar Tiwari under Section 439 of Code of Criminal Procedure for grant of bail is dismissed.