
(2023) 06 MP CK 0071

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 26032 Of 2023

Parvesh @ Musabbar Khan

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 22-06-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 164, 473(3), 439
Indian Penal Code, 1860 — Section 354, 354KA, 354KHA, 376, 506

Citation : (2023) 06 MP CK 0071

Hon'ble Judges : Satyendra Kumar Singh, J

Bench : Single Bench

Advocate : Kuldeep Thapak, Kaushlendra Singh Tomar

Final Decision : Allowed/Disposed Of

Judgement

Satyendra Kumar Singh, J

Case diary is available.

With the consent, heard finally.

This is first application filed under Section 439 of Cr.P.C for grant of bail to the applicant as he has been arrested on 3.6.2023 in connection with Crime No.465/2023 registered at Police Station Bahodapur District Gwalior for the offence punishable under Sections 354, 354-KA, 354-KHA, 506, 376 of IPC.

Prosecution story, in brief is that on 30.5.2023 at about 14:00 hours the applicant entered in the house of the prosecutrix and forcibly committed rape upon her.

Learned counsel for the applicant submits that as per prosecution case itself incident took place on 30.5.2023 at about 14:00 hours while FIR was lodged on the next day i.e. 31.5.2023 at about 16:30 hours and prosecutrix in her FIR nowhere stated that the applicant committed rape upon her. She in her statement recorded under Section 161 of Cr.P.C. on 31.5.2023 also did not mention the fact

that she was subjected to forcible sexual intercourse by the applicant. On the third day of incident, during her statement recorded under Section 164 of Cr.P.C. he for the first time alleged that the applicant committed rape upon her. He further submits that the applicant is a labour and working with the prosecutrix's husband and when he was demanding his wages, then he assaulted the applicant and thereafter he got registered the false and fabricated report against him. He is in custody since 3.6.2023. Trial will take time to conclude and therefore, in the aforesaid circumstances, applicant is entitled for grant of bail.

Learned counsel for the respondent/State has vehemently opposed the prayer and submits that the allegations alleged against the applicant are of serious in nature. During MLC, injuries were found on the body of the prosecutrix which supports the prosecution case, therefore, the applicant is not entitled to be enlarged on bail.

Heard the learned counsel for both the parties.

Having considered rival submission, material pointed out by the learned counsel for the applicant specially with regard to the inconsistency in the FIR, statement recorded under Section 161 of Cr.P.C., statement recorded under Section 164 of Cr.P.C. of the prosecutrix with regard to commission of rape with her and also considering over all material produced by the applicant, without expressing any opinion on the merits of the case, this Court is of the view that the applicant deserves to be enlarged on bail, hence the application is allowed.

It is directed that the applicant be released on bail upon his furnishing personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with a solvent surety in the like amount to the satisfaction of the concerned Court for his appearance before the Trial Court on all such dates as may be fixed in this behalf by the Trial Court during the pendency of trial. It is further directed that applicant shall comply with the provisions of Section 437 (3) of Cr.P.C.

This application is allowed and stands disposed of.

Certified copy, as per Rules.