

---

**(2020) 09 MP CK 0253**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Criminal Case No. 33509 Of 2020**

Rahul S Of O Parmanand Chouhan

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

---

**Date of Decision : 25-09-2020**

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 161, 164, 439

Indian Penal Code, 1860 — Section 109, 324, 363, 366, 36(D), 376 (2)(N), 506

Protection Of Children From Sexual Offence Act, 2012 — Section 5(G), 5(L), 6

**Citation : (2020) 09 MP CK 0253**

**Hon'ble Judges : S. K. Awasthi, J**

**Bench : Single Bench**

**Advocate : C.L. Yadav, Om Prakash Solanki, Shashank Sharma**

**Final Decision : Dismissed**

---

## **Judgement**

This first application under Section 439 of Criminal Procedure Code, 1973 has been filed by applicant, who is implicated in connection with Crime No.123/2020 registered at Police Station Depalpur, District Indore (MP) for offence punishable under Sections 363, 366, 376 (2) (N), 376 (D), 109, 324 and 506 of the Indian Penal Code, 1860 and also under Sections 5 (L) and 5 (G) read with Section 6 of the Protection of Children from Sexual Offence Act, 2012.

The applicant is in custody since 17.05.2020.

As per prosecution case, on 08.05.2020 informant (Subhash s/o Mangilal Balai) lodged report that on 07.05.2020 at about 09:00 AM alleging that his daughter without informing him left the house and not returned back. He and his wife has searched her but not found anywhere. On this information, police registered a case under Section 363 of IPC against unknown person (s). During investigation, the prosecutrix was recovered on 15.05.2020. Her statement was recorded. She stated that on 07.05.2020, she left the house and gone with his friend Rahul. Rahul took her to village Nagpur, Tahsil Sanwer, District Indore (MP) and they lived in godown of Pawan.

Rahul is doing work of operator of J.C.B. Next day, Rahul committed bad act (rape) with her and handed her over to Nilesh. Nilesh took her to village Dhaturiya, Tahsil Sanwer, District Indore (MP) and also committed the same act (rape) with her. Thereafter, Nilesh again handed her over to Rahul. After that, Rahul and Lakhan Chouhan took her to village Jharkoda. Lakhan also committed same act (rape) in night on 13.05.2020. On 14.05.2020, she called by mobile to his maternal uncle. On this basis, applicant and other co-accused persons have been arrested.

Learned Senior Counsel for the applicant has submitted that the applicant is a young boy aged about 21 years and he has falsely been implicated in the present crime. It is further submitted that according to statement of the prosecutrix recorded on 01.07.2020 under Section 164 of the Code of Criminal Procedure, 1973 before the Judicial Magistrate First Class, Depalpur, District Indore (MP), on 07.05.2020, she left the house and gone with his friend Rahul. Rahul took her to village Nagpur, Tahsil Sanwer, District Indore (MP) and they lived in godown of Pawan where Rahul made physical relationship with her. Thereafter, next day, Rahul handed her over to Nilesh and Nilesh took her to village Dhaturiya, Tahsil Sanwer, District Indore (MP) and also committed rape with her. Thereafter, Nilesh again handed her over to Rahul. Thereafter, Rahul and Lakhan took her to village Jharkoda where Lakhan also committed rape. However, after lodging FIR, the prosecutrix was sent to Hospital for her medical examination and the doctor referred to Radiologist for determination of her age, but no ossification test report was submitted along with the charge sheet, which indicates that the prosecutrix was a major lady at the time of incident, and therefore, the Police has not filed the ossification test report with the charge sheet. It is further submitted that from the statement of the prosecutrix, it appears that she was the consenting party. The applicant is in custody since 17.05.2020. The investigation is over and charge sheet has already been filed. There is no possibility of his / her absconsion or tampering with the evidence, if enlarged on bail. Conclusion of the trial will take sufficiently long time. Under these circumstances, learned Senior Counsel for the applicant prays for grant of bail to the applicant.

Learned Panel Lawyer for the non-applicant / State of Madhya Pradesh opposes the bail application by contending that no sufficient ground is made out for releasing the applicant on bail; and prayed for rejection of the application.

Learned Senior Counsel for the applicant has also referred to judgment passed by the Apex Court in the case of Sanjeev Kumar Gupta v. State of Uttar Pradesh & another reported in AIR 2019 Supreme Court 4364 in which while deciding the question of juvenility, the Hon'ble Supreme Court observed that on the basis of date of birth mentioned in the matriculation certificate, it cannot be said that the accused was below 18 years of age at the time of incident, without support of any other document.

In the present case, only scholar register of the prosecutrix is available to show

the age of the prosecutrix; and this entry made in the aforesaid register regarding date of the birth of the prosecutrix, is correct or not, it can be decided only after recording statement of the witnesses; and at this stage, the aforesaid document cannot be discarded.

Considering the facts and circumstances of the case and the arguments advanced by learned counsel for the parties as well as from perusal of the entry regarding date of birth of the prosecutrix made in the scholar register, at the time of incident, the prosecutrix was minor and she has also made allegation against the applicant regarding commission of rape in her statement recorded under Section 161 as well as 164 of the Code of Criminal Procedure, 1973, therefore, this Court is of the view that no case for grant of bail to the applicant, as prayed for, is made out.

Accordingly, Miscellaneous Criminal Case No.33509/2020 has no merits and is hereby dismissed.