

(2023) 07 MP CK 0120

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 32255 Of 2023

Raja Kushwah

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 25-07-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 164, 437(3), 439
Indian Penal Code, 1860 — Section 344, 363, 366, 376(2)(n)
Protection Of Children From Sexual Offences Act, 2012 — Section 5, 6

Citation : (2023) 07 MP CK 0120

Hon'ble Judges : Sanjeev S Kalgaonkar, J

Bench : Single Bench

Advocate : Faisal Ali Shah, R.K. Awasthi

Final Decision : Allowed

Judgement

Sanjeev S Kalgaonkar, J

This first bail application has been filed by applicant Raja Kushwah under section 439 of the Code of Criminal Procedure, 1973 for grant of bail, who has been in judicial custody since 09.07.2023 in connection with Crime No.125/2023 registered at Police Station Tyonda, District Vidisha, for the offences punishable under sections 363, 366, 376(2)(n), 344 of IPC and section 5/6 of Protection of Children from Sexual Offences Act, 2012.

Learned counsel for the applicant, in addition to the ground mentioned in the application, submits that the applicant is aged about 22 years. No case of rape or sexual assault is made out against the applicant. He has been falsely implicated in the matter at the instance of parents of the prosecutrix. The applicant is a permanent resident of village Chak Lagdha, District Vidisha, Therefore, there is no likelihood of his absconsion leaving behind his family to suffer. On these grounds, learned counsel for the applicant prays for grant of bail to the applicant.

Per contra, learned counsel for the State opposes the prayer for grant of bail to

the applicant and submits that according to first admission register of Government Primary School, Lagdha, date of birth of prosecutrix is 06/06/2007, therefore, she was minor at the time of incident i.e., 21/05/2023 and till, she was recovered. Her consent is immaterial in the matter, therefore, the applicant may not be released on bail.

In reply, learned counsel for the applicant submits that the date of birth of the applicant will be determined after evidence on merit before the trial Court, but the date of birth as reflected by the Aadhar Card which was given to the applicant by victim herself shows that she was major at the time when she left her parental home on her own volition.

Learned counsel for the State on request of the Court read over the statements of prosecutrix recorded under Sections 161 and 164 of CrPC and those statements reveal that the prosecutrix left her parental home on her own volition. She insisted the applicant for marriage as her parents were trying to marry her elsewhere. After marring in a temple, both of them stayed for almost one month in a rented premises at Indore.

Heard learned learned counsel for the parties and perused the case diary. Considering overall circumstances, age of the applicant and the fact that both the parties belong to same social status and statements of all material witnesses have been recorded, so there is no likelihood of interference in the investigation and absconsion of the accused, but without commenting on the merits of the case, this Court is inclined to grant bail to the applicant. Accordingly, the application is allowed. It is hereby directed that the applicant shall be enlarged on bail upon his furnishing a personal bond in the sum of Rs.1,00,000/- (Rupees One Lakh Only) with one solvent surety in the like amount to the satisfaction of the Trial Court. The applicant shall abide by the terms and conditions as enumerated under section 437(3) of the Cr.P.C. The order shall be effective till the end of the trial, however, in case breach of any of the pre-conditions of bail, it shall become ineffective without reference to this Court.

Certified copy as per rules.