

(2017) 02 MP CK 0226
In the Madhya Pradesh High Court
Case No : 1194 of 2017

Sabir Hussain and others

APPELLANT

Vs

State of Madhya Pradesh and another

RESPONDENT

Date of Decision : 17-02-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 439](#), [Section 161](#), [Section 164](#), [Section 437\(3\)](#) - Special powers of High Court or Court of Session regarding b

Citation : (2017) 02 MP CK 0226

Hon'ble Judges : Rajendra Mahajan

Bench : Single Bench

Advocate : Anoop Saxena, Shahin Fatima

Judgement

1. This is the first bail application filed by the applicant under Section 439 of the Cr.P.C. for grant of bail in connection with Crime No.76/2016 registered at Police Station Matguvan of Chhatarpur district against him and co-accused Dashrath for the offences punishable under Sections 363, 366, 376 and 34 of the IPC and 3 r.w. 4 of the Protection of Children from Sexual Offences Act, 2012 (for short "the POCSO Act").

2. According to the prosecution, on 13.08.2016 the complainant lodged an FIR stating that on 12.08.2016, his 16 years old daughter, the prosecutrix herein, had gone to the market of Matguvan town from his native village Ranguvan. In the evening of that day, she did not return. Thereafter, he and his family members searched her among the residents of his relatives and acquaintances, but in vain. The police registered a case against an unknown offender under Section 363 of the IPC. On 07.11.2016, the prosecutrix with her father/the complainant reached Police Station Matguvan, where the Investigating Officer of the case recorded her case diary statement under Section 161 of the Cr.P.C. She has stated in her statement that the applicant is the real brother of her Bhabhi. On account of which, he frequently visited her house. He used to say that he

wanted to marry her and if she refused to marry him, he would defame her in their society. On 12.08.2016, the co-accused, who happens to be Jija (brother-in-law) of the applicant, took her from Matguvan to Delhi by train, where the applicant married her in a temple against her wishes. Thereafter, he established sexual relations with her. On the strength of the statement of the prosecutrix, the I.O. registered the case against the applicant and the co-accused under the penal Sections as noted in para 1 of this order.

3. Learned counsel for the applicant submits that the applicant has been in custody since 10.11.2016 and that the charge-sheet had been filed on 09.12.2016. He submits that in the course of investigation of the case, the I.O. got the prosecutrix's statement recorded under Section 164 Cr.P.C. before the Judicial Magistrate First Class Chhatarpur on 09.11.2016. The prosecutrix has recorded in her statement her age about 19 years and that she has stated that the applicant married her in a temple at Delhi with her consent, that thereafter they have started living in Delhi as husband- wife and that the applicant has sexual intercourse with her upon her will and consent. She has also stated in her statement that she wants to remain in the company of the applicant as his wife. He submits that in view of the statement of the prosecutrix recorded under Section 164 Cr.P.C., no offence against the applicant is prima facie made out under which the case is registered. He submits that the learned Special Judge (Atrocities) ought to have granted regular bail to the applicant on the basis of her said statement. However, the learned Special Judge has not attached importance to the said statement and dismissed the applicant's bail application stating that the applicant has committed offences of very serious nature. He submits that the applicant is a permanent resident of Chhatarpur district and that he has no criminal antecedents. He submits that the co-accused has been granted regular bail by the learned Special Judge. Upon these submissions, he prays for grant of bail to the applicant.

4. Learned Government Advocate opposes the prayer.

5. In the impugned order of rejection of bail dated 02.01.2017, the learned Special Judge has observed as to the statement of the prosecutrix recorded under Section 164 Cr.P.C. thus:- "VERNACULAR MATTER OMITTED" Upon the perusal of the impugned order, I have found that the learned Special Judge has not assigned any reason as to why he has not placed reliance upon the statement of the prosecutrix recorded 164 Cr.P.C. In view of the said observation made by the learned Special Judge, it is pertinent to mention here that in the case of State of Karnataka By Nonavinakere Police Vs. Shivanna alias Tarkari Shivanna, (2014) 8 SCC 913, the Supreme Court has issued the directions in the form of mandamus to all the police stations" in-charge in the country regarding the fast track procedure of investigation of rape cases and trial of such cases. Para 10 of the judgment is relevant in which all such directions are mentioned. One of the directions is that the I.O. of a rape case shall get the statement of the prosecutrix recorded under Section 164 Cr.P.C. by a Judicial Magistrate. The

understandable reason for recording the statement of the prosecutrix under Section 164 Cr.P.C. is that more often than that the case diary statement of the prosecutrix is not truly recorded by the I.O. of the case on account of extraneous considerations, whereas the Magistrate records the statement of her under Section 164 Cr.P.C. without being influenced by any extraneous considerations. In the present case, the police have registered the case against the applicant under Sections 376 IPC and 3 r.w. 4 of the POCSO Act in addition to other offences. Thus, in compliance with the said direction, the I.O. of the present case has dutifully got the statement of the prosecutrix recorded under Section 164 of the Cr.P.C. Upon a perusal of the statement of the prosecutrix under Section 164 Cr.P.C., I find that the learned JMFC has recorded the statement with due care and precaution. As per the case diary, the I.O. of the case has recorded the case diary statement of the prosecutrix in presence of her father/the complainant. Therefore, it can be said with certainty that the prosecutrix has given her case diary statement under the pressure of her father. In the circumstances, the learned Special Judge ought to have given the paramount importance over and above the case diary statement of the prosecutrix. As stated hereinbefore, the learned Special Judge has not assigned any reason for disbelieving the statement of the prosecutrix under Section 164 Cr.P.C. Thus, the impugned order of rejection of bail smacks of the arbitrariness and wilfulness on the part of the learned Special Judge. Such approach is strongly disapproved by this court. In the light of the said discussions, I fully place reliance upon the statement of the prosecutrix recorded under Section 164 Cr.P.C.

6. Taking into consideration the facts and circumstances of the case, the statement of the prosecutrix under Section 164 Cr.P.C. and the submissions raised on behalf of the parties by their counsel, but without making any comment on merits of the case, I am of the confirmed view that it is a fit case for grant of bail to the applicant. Hence, the application is allowed. It is ordered that applicant Manoj Ahirwar be released on bail upon his furnishing a personal bond in the sum of Rs.40,000/- (forty thousand) with one surety of the same amount to the satisfaction of the court concerned for securing his presence on all such dates as may be fixed by it in the course of trial of the case. He shall abide by the conditions enumerated in Section 437(3) of the Cr.P.C. In case of bail jump, the court concerned will have power to cancel the applicant's bail.

7. Certified copy as per rules.