

(2021) 02 MP CK 0175

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No.11340 Of 2021

Sanjay Balmik

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 26-02-2021

Acts Referred:

Indian Penal Code, 1860 — Section 354, 376, 377
Protection Of Children From Sexual Offences Act, 2012 — Section 7, 8
Code Of Criminal Procedure, 1973 — Section 439

Citation : (2021) 02 MP CK 0175

Hon'ble Judges : S. A. Dharmadhikari, J

Bench : Single Bench

Advocate : Mehmood Khan, Devendra Choubey

Final Decision : Allowed

Judgement

S. A. Dharmadhikari, J

The applicant has filed this third bail application u/S 439, Cr.P.C. for grant of bail. Earlier two applications were dismissed as withdrawn vide orders

dt.27.11.2020 and 11.01.2021 passed in M.Cr.C.No.47050/2020 and 51583/2020 respectively.

The applicant has been arrested on 25.09.2020 by Police Station - Indarganj, District Gwalior in connection with Crime No.295/2020 registered in

relation to the offences punishable under Sections 376, 377, 354 of IPC and Sections 7/8 of POCSO Act.

Allegations against the applicant, in short, are that on 25.09.2020 when the complainant did not found his daughter in the house, who is aged about 15

years, after search, it came to the knowledge that the present applicant took her alongwith him in the room and tried to outrage her modesty. On the

basis of aforesaid, crime has been registered against the applicant.

Learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He is in custody since 25.09.2020. Charge

sheet has been filed, therefore, no custodial interrogation is required in the matter. P.W.1, P.W.2 and P.W.3, prosecutrix, her father and her mother

respectively have turned hostile and did not support the prosecution. It is further submitted that in view of the COVID-19 outbreak, detention of

applicant in already congested prisons may be detrimental. Trial will take time for its conclusion. Applicant is permanent resident of District Gwalior

and there is no likelihood of his absconsion or tampering with the prosecution evidence and he is ready to abide by the terms and conditions as may be

imposed. With the aforesaid submissions, prayer for grant of bail is made.

Learned Government Advocate for the State opposed the application by contending that on the basis of the allegations and the material available on

record, no case for grant of bail is made out. It is also submitted that the FSL report is positive but the DNA is not available. On such grounds, prayer

for dismissal of the application has been made.

However, it would not be desirable to enter into the merits of the rival contentions at this juncture.

Considering the overall facts and circumstances of the case so also the fact that P.W.1, P.W.2 and P.W.3 have turned hostile and did not support the

prosecution coupled with the fact that the trial is not likely to conclude in near future and prolonged pre-trial detention being anathema to the concept

of liberty, this Court is inclined to extend the benefit of bail to the applicant.

Accordingly, without expressing any opinion on merits of the case, this application is allowed and it is directed that the applicant be released on bail on

furnishing a personal bond in the sum of Rs..50,000/- (Rupees Fifty Thousand only) with one solvent surety in the like amount to the satisfaction of the

concerned trial Court.

This order will remain operative subject to compliance of the following conditions by the applicant :-

1. The applicant will comply with all the terms and conditions of the bond executed by him;
2. The applicant will cooperate in the investigation/trial, as the case may be;

3. The applicant will not indulge himself in extending inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to the Police Officer, as the case may be;
4. The applicant shall not commit an offence similar to the offence of which he is accused;
5. The applicant will not seek unnecessary adjournments during the trial; and
6. The applicant will not leave India without previous permission of the trial Court/Investigating Officer, as the case may be.

A copy of this order be sent to the Court concerned for compliance. Certified copy as per rules.