
(2023) 09 MP CK 0092

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 40840 Of 2023

Vishnu Kumar Bairwa

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 20-09-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 164, 438, 438(2)
Indian Penal Code, 1860 — Section 376, 376(2)(n), 506

Citation : (2023) 09 MP CK 0092

Hon'ble Judges : Satyendra Kumar Singh, J

Bench : Single Bench

Advocate : Dinesh Savita, Sabhya Pandey, D.P. Singh

Final Decision : Allowed

Judgement

Satyendra Kumar Singh, J

1. Case diary is available.

2. This is first application filed under Section 438 of Cr.P.C. for grant of anticipatory bail to the applicant, as he is apprehending his arrest in connection with Crime No.690/2023 registered at Police Station – Guna Kotwali, District Guna (M.P.) for offence punishable under Sections 376, 376 (2) (n) and 506 of IPC.

3. Prosecution case, in brief, is that in the year 2019 friendship developed between the prosecutrix and the applicant while talking on mobile phone. After some period of time, the applicant told to the prosecutrix that he wants to solemnize marriage with her as they both belong to the same caste, whereafter they both continued to have talks with each other regularly and the applicant also used to visit the prosecutrix on several occasions at her rented room situated in Bhargava Colony, Guna and on the false pretext of marriage, committed forcible sexual intercourse with her repeatedly. On 2/1/2022 the prosecutrix told to the applicant to marry her, but he refused for the same saying

that he has relations with many girls like her and cannot marry all of them. The applicant also threatened to the life of the prosecutrix as well as also to defame her, if she makes any complaint against him.

4. Learned counsel for the applicant submits that admittedly complainant is a major girl aged about 23 years. From the FIR and the statements of the prosecutrix recorded during investigation as well as Whatsapp chats between them, it is also apparent that applicant and prosecutrix were friends and she voluntarily made physical relationship with the applicant. She thereafter started pressurizing him either to marry her or to pay Rs.15,00,000/- to settle the issue and as the applicant refused to marry the complainant and also to pay any amount to her, therefore, this false and fabricated FIR has been lodged against him. FIR is hopelessly delayed and has been lodged after about four years of the incident. She was a consenting party and allegations alleged against the applicant are totally false. Applicant is a Government Servant and has falsely been implicated in the matter. He is a young boy aged about 25 years. No offence is made out against him. Custodial interrogation of the applicant is not required, therefore, the applicant is entitled for anticipatory bail. Learned counsel for the applicant has submitted copy of Whatsapp chats in between applicant and complainant's Advocate in support of his above submissions.

5. Learned counsel for the respondent/State as well as learned counsel for the complainant have vehemently opposed the prayer and submit that applicant on the false pretext of marriage made intimate relationship with the complainant and forcefully committed sexual intercourse with her. Offences alleged against the applicant are very heinous in nature, therefore, he is not entitled to be enlarged on bail.

6. Heard learned counsel for both the parties and perused the record.

7. As per prosecution case itself, prosecutrix is major and she herself stated in her statements recorded during investigation that she and applicant were friends and used to meet each other regularly at her rented room. In these circumstances, having considered the rival submissions made by learned counsel for the parties as well as considering prosecutrix's statements recorded during investigation under Sections 161 and 164 of Cr.P.C., so also the delayed FIR and the overall facts and circumstances of the case, without expressing any opinion on the merits of the case, in view of this Court the applicant deserves to be enlarged on bail. Hence, the application is allowed.

7.1 It is directed that in the event of arrest of the applicant, he shall be released on bail upon furnishing personal bond in the sum of Rs.1,00,000/- (Rupees One Lac only) with one surety in the like amount to the satisfaction of the Arresting Officer for his appearance before the Trial Court on all dates and for complying with the conditions enumerated in sub-section (2) of Section 438 of the Code of Criminal Procedure.

7.2 Certified copy as per rules.