THE HIGH COURT OF MADHYA PRADESH
MCRC-35987-2020
(RAM SUSHIL vs THE STATE OF MADHYA PRADESH & ANOTHER)

JABALPUR
DATED : 23.11.2020 (through video conferencing)

Shri Sankalp Kochar, Advocate for the applicant.

Shri Ayur Jain, Panel Lawyer for the respondent/State.

Shri J.L. Soni, Advocate for the objector.

This is applicant's first application for bail under Section 439 of Cr.P.C. The applicant is in custody since 28.08.2020 in connection with Crime No.199/2020 registered at Police Station Silwani, District Raisen (M.P.) for the offences punishable under Sections 363, 366, 376, 34 of IPC and Section 3, 4 of the Protection of Children from Sexual Offences Act, 2012.

The allegation against the applicant is that of abduction and rape of the prosecutrix. It is further alleged that he was about to sell the prosecutrix.

Counsel for the applicant has submitted that the prosecutrix was major having born on 15.10.2001 as the incident has taken place on 26.08.2020. It is further submitted that in her statements under Sections 161 and 164 of Cr.P.C., the prosecutrix has deposed in favour of the applicant, however soon after she was given in the custody of her parents, her supplementary statement under Section 161 of Cr.P.C. was recorded on 05.09.2020 wherein she has taken a 'U' turn and alleged the offence of rape against the applicant and that of human trafficking. The counsel has submitted that the charge sheet in the present case has already been filed and the applicant is in jail since 28.08.2020 and the final conclusion of the trial is likely to take sufficiently long time. Thus, it is submitted that the applicant be released on bail.

Counsel for the objector has vehemently opposed the prayer and has submitted that the applicant is the main accused and has committed rape on the prosecutrix, who was minor at the time of incident as her age according

to her mark-sheet would be around 17 years 08 months and thus no case for bail is made out looking to the age of the prosecutrix.

Counsel for the respondent/State has also opposed the prayer and has submitted that in her supplementary statement under Section 161 of Cr.P.C. the prosecutrix has clearly levelled allegations against the applicant.

On due consideration of the submissions and on perusal of the case diary including the statements of the prosecutrix under Sections 161 and 164 of Cr.P.C. as also the supplementary statement recorded after 07 days under Section 161 of Cr.P.C. as also looking to the photographs of the prosecutrix with the applicant, *prima facie* this Court is satisfied that the applicant has made out a case for bail. Accordingly, without commenting on the merits of the case, the application is **allowed**.

It is directed that applicant- **Ram Sushil** shall be released on bail upon his furnishing personal bond in the sum of **Rs.25,000/- (Rupees Twenty Five Thousand Only)** with separate surety in the like amount to the satisfaction of the concerned trial Court for his appearance before the trial Court on all such dates as may be fixed in this behalf by the trial Court during the pendency of trial.

The prison authorities are also requested to ensure compliance of the order passed by the Supreme Court in Writ Petition No. 1/2020 and ensure that the applicant is examined by the jail doctor before his release.

If the applicant shows symptoms of COVID-19, the doctor shall forthwith direct him to be produced before the appropriate hospital designated for the detection and treatment of COVID-19 patients. If the doctor is of the opinion that the applicant is not affected with the virus, the jail authorities shall ensure his transportation from the jail to his place of residence.

A typed copy of this order be forwarded to the Office of the Advocate General and to Shri Ayur Jain, learned Panel Lawyer, on their respective

email address, for intimation to the Police Station concerned. The office is requested to forward a copy of this order to the Learned Court below.

With the aforesaid, the present application filed under Section 439 of the Cr.P.C. stands **allowed** and **disposed of**.

Certified copy as per rules.

(Subodh Abhyankar)
Judge

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