IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR

ON THE 1st OF FEBRUARY, 2024

MISC. CRIMINAL CASE No. 3772 of 2024

BETWEEN:-

SAMEER@SHIVA DHAKAD S/O SHRI JEEWANLAL DHAKAD, AGED 19 YEARS, R/O GRAM NEGMA THANA CANTT DISTRICT GUNA (MADHYA PRADESH)

.....APPLICANT

(SHRI SATYENDRA SINGH RAJPUT- ADVOCATE)

AND

STATE OF MADHYA PRADESH THROUGH POLICE STATION KOTWALI GUNA DISTRICT GUNA (MADHYA PRADESH)

.....RESPONDENT

(SHRI KULDEEP SINGH- PUBLIC PROSECUTOR

This application coming on for hearing this day, the court passed the following:

ORDER

This first bail application has been filed by applicant under Section 439 of the Code of Criminal Procedure, 1973 for grant of bail in connection with Crime No. 1034/2023 registered at Police Station Kotwali, District Guna (M.P.) for offence punishable under Sections 363, 376 of the IPC and Sections 3/4 of the POCSO Act. The applicant is in judicial custody since 20/12/2023.

As per the case of prosecution, mother of the victim reported to Police Station Kotwali, District Guna that her daughter, aged around 16 years and 6 months is missing since 08.12.2023. She did not return from school. She tried to search her. She suspects that applicant Sameer @ Shiva Dhakad has allured

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and taken her daughter. On such allegations, Police Station Kotwali, District Guna (M.P.) registered FIR at Crime No. 1034/2023 for offence punishable under Section 363 of the IPC. During course of investigation, victim was recovered from Nanakhedi Mandi Gate on 20.12.2023. In her statement recorded under Section 161 of the Cr.P.C on same day, victim stated that she was friendly with Sameer @ Shiva as both of them were studying in the same coaching. She desired to live with Sameer. As she liked applicant, she went with him to Ujjain. They stayed at Dharmsala in Ujjain. Victim and applicant went to secluded place where applicant committed sexual assault on her. As they were short of money, they returned to Guna. Police intercepted her from Nanakheda Mandi. Statement of victim was recorded under Section 164 of the Cr.P.C, she stated on same line. Thereafter, prosecution for offence punishable under Sections 376 of the IPC and Sections 3/4 of the POCSO Act was added. Applicant was arrested on 20.12.2023. He is in custody ever since. After completion of investigation, final report was submitted on 12.01.2024.

Learned Counsel for the applicant, in addition to the grounds mentioned in the application, submits that applicant is aged around 19 years. He is student of Class Xth. Applicant and victim were pursuing study at same coaching. It is a case of romantic relationship between two young persons. Victim left her parental home and went to Ujjain without any allurement or compulsion by the applicant. Applicant and victim were not aware of consequence of their act. Learned counsel further submits that allegation of rape was made against the applicant under pressure of family members of the victim, who were opposed to their relationship. There is no likelihood of absconsion of applicant leaving his family and home. There is no likelihood of tampering with the evidence as

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both the parties relate so same socio-economic status. No criminal antecedent is reported against the applicant. Jail incarceration on false allegation is causing hardship to young applicant. The trial would take time to conclude. Therefore, applicant may be extended the benefit of bail.

Per contra, learned Counsel for the State opposes the bail application on the ground of gravity of alleged offence.

Heard learned counsel for the parties and perused the case diary.

Considering the arguments advanced by both the parties and overall circumstances of the case, regard being had to young age of the applicant, but without commenting on merits of the case, this Court is inclined to release the applicant on bail. Thus, the application is allowed.

Accordingly, it is directed that **applicant Sameer @ Shiva Dhakad** shall be released on bail in relation to Crime No.1034/2023 registered at Police Station Kotwali, District Guna (M.P.) for offence punishable under Sections 363, 376 of the IPC and Sections 3/4 of the POCSO Act, upon furnishing a personal bond in the sum of **Rs. 50,000/- (Rs. Fifty Thousand Only)** with one solvent surety of the same amount to the satisfaction of the Trial Court, for compliance with the following conditions,: **(For the sake of convenience of understanding by accused and surety, the conditions of bail are also reproduced in Hindi as under):-**

(1) Applicant shall remain present on every date of hearing as may he directed by the concerned court;

(1) आवेदक संबंधित न्यायालय के निर्देशानुसार सुनवाई की प्रत्येक तिथि पर उपस्थित रहेगा।

(2) Applicant shall not commit or get involved in any offence of similar nature;

(2) आवेदक समान प्रकृति का कोई अपराध नहीं करेगा या उसमें सम्मिलित नहीं होगा।

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(3) Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them/him/her from disclosing such facts to the Court or to the police officer;

(3) आवेदक प्रकरण के तथ्यों से परिचित किसी व्यक्ति को प्रत्यक्ष या अप्रत्यक्ष रूप से प्रलोभन, धमकी या वचन नहीं देगा, जिससे ऐसा व्यक्ति ऐसे तथ्यों को न्यायालय या पुलिस अधिकारी को प्रकट करने से निवारित हो।

(4) Applicant shall not directly or indirectly attempt to temper with the evidence or allure, pressurize or threaten the witness;

(4) आवेदक प्रत्यक्ष या अप्रत्यक्ष रूप से साक्ष्य के साथ छेडछाड करने का या साक्षी या साक्षियों को बहलाने–फुसलाने, दबाव डालने या धमकाने का प्रयास नहीं करेगा।

(5) During trial, the applicant shall ensure due compliance of provisions of Section 309 of Cr.P.C. regarding examination of witnesses in attendance;

(5) विचारण के दौरान, उपस्थित गवाहों से परीक्षण के संबंध में आवेदक धारा 309 दं.प्र.सं. के प्रावधानों का उचित अनुपालन सुनिश्चित करेगा।

This order shall be effective till the end of trial. However, in case of breach of any of the precondition of bail, the Trial Court may consider on merit cancellation of bail without any impediment of this order.

The trial Court shall get these conditions reproduced on the personal bond by the accused and on surety bond by the surety concerned. If any of them is unable to write, the scribe shall certify that he had explained the conditions to the concerned accused or the surety.

C.C. as per rules.

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(SANJEEV S KALGAONKAR)
JUDGE

Avi

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