IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR

ON THE 17th OF JANUARY, 2024

MISC. CRIMINAL CASE No. 38212 of 2023

BETWEEN:-

AMJID KHAN S/O HAMEED KHAN, AGE 20 YEARS, OCCUPATION: LABOUR RESIDENT OF GRAM GODARI POLICE THANA BAIRAD DISTRICT SHIVPURI (MADHYA PRADESH)

.....APPLICANT

(SHRI RAJESH GOSWAMI- ADVOCATE FOR APPLICANT)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH POLICE STATION BAIRAD DISTRICT SHIVPURI (MADHYA PRADESH)**

2. **PROSECUTRIX THROUGH POLICE STATION BAIRAD DISTRICT SHIVPURI, (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI R.K. AWASTHI- PUBLIC PROSECUTOR FOR RESPONDENT NO.1-STATE)

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

ORDER

IA No.1070 of 2024, an application moved on behalf of applicant for taking additional documents on record is allowed. Documents are taken on record.

This **second** 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.184 of 2023 registered at Police Station Bairad, District Shivpuri

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(M.P.) for the offences punishable under Sections 376, 376(2)(n), 506 of IPC and Sections 5, 6 of the POCSO Act.

Applicant is in judicial custody since 05-06-2023. First application of the applicant was dismissed as withdrawn vide order dated 14th of August, 2023 passed by this Court in MCRC No. 35756 of 2023. Thereafter, the statements of victim (PW1) and her mother (PW2) have been recorded.

As per the case of prosecution, victim, aged around 18 years and two months, reported to PS Bairad, District Shivpuri that 5-6 months back, she went to public tap to fetch water. Her neighbour Amjid Khan (applicant) came there and dragged her behind the school. Amjid Khan committed rape on her. Amjid Khan threatened to kill her and her family if she narrates incident to anybody. Thereafter, on number of occasions, Amjid Khan committed rape on her. When she missed her menstrual cycle, her mother enquired from her, so she narrated the incident to her mother and brother Sakir Khan. Thereafter, she came to report. On such allegations, PS Bairad registered FIR at Crime No.184 of 2023 for the offences punishable under Section 376, 376(2)(n), 506 of IPC and Sections 5L, 6 of the POCSO Act. Victim was forwarded for medico-legal examination. She underwent abortion of fetus aged about 16 weeks. Applicant was arrested on 05-06-2023, he is in custody ever since. On completion of investigation, Final Report was submitted. Trial is underway. Victim was examined on 29-11-2023 and her mother was examined on 19-12-2023 before the Trial Court.

Learned Counsel for the applicant, in addition to the grounds mentioned in the application, submits that it is a case of romantic relationship between two young persons.Victim has made allegation of rape under pressure of her family

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when she missed her menstrual cycle. Applicant was aged around 20 years whereas victim was aged around 20 years at the time of incident as per statements of Victim (PW1) and her mother (PW2). Learned Counsel further submits that the victim and her mother did not support the prosecution in their evidence. Material witnesses have been examined. Only witnesses with regard to investigation are yet to be examined. There is no likelihood of tampering with the evidence. Applicant is an agriculturist by profession. There is no likelihood of his absconsion leaving his family and home. Jail incarceration on false allegation is causing hardship to applicant. 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 and cites one more criminal case against applicant. Learned Counsel referring to DNA report, submits that applicant was found to be biological father of fetus aborted by victim.

In reply, learned Counsel for the applicant submits that no offence of similar nature is reported against him. Another matter is pending for trial and applicant has never been convicted.

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 the young age of applicant, but without commenting on merits of the case, this Court is inclined to release the applicants on bail. Thus, the application is allowed.

Accordingly, it is directed that applicant **- Amjid Khan** shall be released on bail in connection with Crime No.184 of 2023 registered at Police Station Bairad, District Shivpuri (M.P.) for the offence punishable under Sections 376, 376(2)(n), 506 of IPC and Sections 5, 6 of the POCSO Act, upon furnishing a

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personal bond in the sum of Rs. **1,00,000/- (Rs. One Lakh 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।

(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 छेडछाड़ करने का या साक्षी या साक्षियों को बहलाने–फुसलाने, दबाव डालने या धमकाने का प्रयास नहीं करेगा।

(5) During trial, the applicants 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

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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, it shall become ineffective without reference to the Court.

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.

(SANJEEV S KALGAONKAR)
JUDGE

MKB

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