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**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

**BEFORE
HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR**

ON THE 3rd OF JANUARY, 2024

MISCELLANEOUS CRIMINAL CASE No. 48010 of 2023

BETWEEN:-

**AJAY KUSHWAH S/O SHRI HALKU KUSHWAH, AGED
ABOUT 21 YEARS, OCCUPATION: STUDENT, RESIDENT
OF GRAM JETPURA POLICE THANA ASWAR DISTRICT
BHIND (MADHYA PRADESH)**

.....APPLICANT

(SHRI SUSHIL GOSWAMI - ADVOCATE FOR THE APPLICANT)

AND

**THE STATE OF MADHYA PRADESH INCHARGE POLICE
STATION THROUGH POLICE STATION ALAMPUR
DISTRICT BHIND (MADHYA PRADESH)**

.....RESPONDENTS

***(SHRI PRAMOD KUMAR PACHORI - PUBLIC PROSECUTOR
SHRI MANOJ KUMAR DWIVEDI- ADVOCATE FOR THE COMPLAINANT)***

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

ORDER

Heard on IA No. 19968/2023, an application under Section 301(2) of the
Cr.P.C.

For the reasons stated in the application, the same is allowed and Shri
Manoj Dwivedi - learned counsel for the complainant and his associate is
permitted to assist the prosecution.

This first bail application has been filed by the applicant under Section
439 of the Code of Criminal Procedure, 1973 for grant of bail in connection
with Crime No.76 of 2023 registered at Police Station Alampur, District Bhind

(M.P.) for offences punishable under Section 363, 366, 376, 34 of IPC and Section 3/4 of POCSO Act. Applicant is in judicial custody since 4-10-2023.

As per the case of prosecution, father of victim reported to PS Alampur, District Bhind that his daughter, aged around 17 years and 8 months, is missing since night of 24-09-2023. Some unknown person has allured and taken his minor daughter. On such allegations, PS Alampur, District Bhind registered FIR at Crime No.76 of 2023 for offence punishable under Section 363 of IPC against unknown offender. Victim was recovered from Chakla Gate, Outpost Metad, PS Gotad, (Gujarat) on 03-10-2023. In her statement recorded under Section 161 of CrPC on 04-10-2023, victim stated that her uncle introduced her with one Sanjeev Kushwah . She used to converse with Sanjeev Kushwah on mobile phone. On 22-09-2023, she called Sanjeev Kushwah and requested him to take her along with him otherwise she would die. On 24-09-2023, her uncle brought some sleep pills. She administered those sleep pills in food of family in the night. Her uncle assisted her to reach Sanjeev Kushwah, who was waiting for her near the tower of Village. Her uncle told them that she should go with Sanjeev Kushwah on motorcycle and they may marry in Court, therefore, she went with Sanjeev Kushwah to Alampur and from there, they boarded a four-wheeler along with some other persons and went to Kota (Rajasthan). Sanjeev Kushwah took her to Udaipur, but mid-way, they deboarded bus and went to Tilakwada. They stayed with paternal aunt of Sanjeev Kushwah for two days at there. Arti Ben, happens to be daughter-in-law of paternal aunt of Sanjeev Kushwah, took them to her paternal home in Bota (Gujarat). Her father, uncle and police team reached there and brought her to Alampur, District Bhind. Victim further stated that Sanjeev Kushwah has allured and taken her to

Badodra (Gujarat) for marrying her, but he or any other persons have not committed any wrong or indecent act with her. Later, in her statement recorded under Section 164 of CrPC, victim alleged rape against her uncle and molestation against Sanjeev Kushwah and his associates Pawan and Ajay. Accused Sanjeev Kumar Kushwah was arrested on 04/10/2023, Pawan was arrested on 10/10/2023, Raju alias Rajkumar was arrested on 04/10/2023, Lakhan Patwa was arrested on 05/10/2023 and applicant-Ajay Kushwah was arrested on 04-10-2023. Applicant is in custody ever since. Statements of witnesses have also been recorded. Relevant seizure has been made. Medico-legal examination of victim and applicant has been conducted. Later on, offence punishable under Sections 366, 376, 34 of IPC and Section 3/4 of POCSO Act was added. Final report is submitted on 22/12/2023.

Learned counsel for the applicant, in addition to the grounds mentioned in the application, submits that as per prosecution story, victim is aged 17 years and 8 months. Sanjeev Kumar Kushwah is aged 19 years. It is a case of romantic relationship between two young persons. Applicant was not aware about the minority of victim and consequence of their acts. In her initial statement, victim has not alleged any misdemeanour against Sanjeev, Pawan and Ajay but later under the pressure of family, she had made general allegation of molestation (*Chheda-Chhedi*) against the applicant. Applicant is aged 21 years. Applicant is a student. Both the parties belong to same socio-economic status, therefore, there is no likelihood of his tampering with the evidence. There is no likelihood of his absconsion leaving behind his family, home and study. No further custodial interrogation is required in the matter against the applicant as the investigation with regard to the applicant is complete. Jail incarceration on false allegation is causing hardship to the applicant. Trial would take time to

conclude. Therefore, the applicant may be released on bail.

Per contra, learned counsel for the State ably assisted by learned counsel for the complainant, opposed the bail application on the ground of gravity of alleged offence. Learned Counsel submits that the applicant assisted co-accused Sanjiv who has allured and taken the victim, therefore, he may not be extended the benefit of bail.

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 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 AJAY KUSHWAH** shall be released on bail in relation to Crime No.76 of 2023 registered at Police Station Alampur, District Bhind (M.P.) for offences punishable under Section 363, 366, 376, 34 of IPC and Section 3/4 of 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 be 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 छेड़छाड़ 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, 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

Prachi

