IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE MANINDER S. BHATTI

ON THE 2nd OF FEBRUARY, 2024

MISC. CRIMINAL CASE No. 499 of 2024

BETWEEN:-

KAMLESH @ KAMAL AHIRWAR S/O SHRI UTTAM AHIRWAR, AGED ABOUT 22 YEARS, OCCUPATION: LABOUR R/O VILLAGE SEWAR POLICE STATION BAMNORA DISTRICT CHHATARPUR (MADHYA PRADESH)

.....APPLICANT

(BY SHRI SHREYASH PANDIT - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH POLICE STATION BAMNORA DISTRICT CHHATARPUR (MADHYA PRADESH)**

2. **VICTIM A S/O NOT MENTION NOT MENTION (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI C.S. PARMAR - GOVT. ADVOCATE)
(OBJECTOR BY MS. PAPIYA DAS - ADVOCATE)

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

ORDER

This is **first** bail application filed by the applicant under Section 439 of the Code of Criminal Procedure for grant of regular bail relating to FIR/Crime No. 91/2023 dated 21.09.2023 registered at Police Station Bamnora District Chhatarpur for the offence punishable under Section 376, 506 and 450 of Indian Penal Code and Sections 3/4 and 5/6 of POCSO Act, 2012.

2. It is contended by the counsel for the applicant that in the present case

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in connection with an incident dated 2.1.2023, First Information Report has been lodged on 21.9.2023 with an inordinate delay of 9 months which has remained unexplained. It is contented by the counsel that as per the prosecution the age of the prosecutrix at the time of offence was 16 years and 8 days and on the date of lodging of F.I.R she was aged about 16 years and 9 months. It is contended by the counsel that the prosecution story further discloses that a futile attempt has been made to project a concocted story inasmuch as the parents of the prosecutrix did not lodge any report till the child was born on 20.9.2023 and the very next day, i.e., 21.9.2023, the F.I.R has been lodged. Therefore, the applicant deserves to be enlarged on bail.

3. The counsel for the State as well as the counsel for objector have opposed the application and submitted that as per the allegations levelled, the offence was committed with a minor and, therefore, taking into consideration the serious allegation, the applicant deserves to be dismissed.

4. Heard the submissions advanced on behalf of the parties and perused the case diary.

5. Undisputedly, the F.I.R in the present case has been lodged after lapse of 9 months. It further appears from the perusal of the record that when the prosecutrix delivered a child thereafter the F.I.R has been lodged. As per the prosecution the incident had taken place on 2.1.2023 and the F.I.R was lodged on 21.9.2023. The present applicant is aged about 22 years and on the date of registration of F.I.R the age of prosecutrix was 16 years and 9 months.

6. Thus, taking into consideration the totality of the circumstances and also the fact that the present applicant is in custody since 21.9.2023, this Court deem it fit to allow this application. Therefore, without commenting on the merit

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of the case, the application is allowed.

7. It is directed that the applicant **Kamlesh Ahirwar** shall be released on bail on his furnishing a personal bond in a sum of **Rs.50,000/- (Rupees Fifty Thousand Only)** with one surety in the like amount to the satisfaction of the trial Court concerned for his appearance before the said Court on all such dates as may be fixed by that Court in this regard during the pendency of trial.

8. It is further directed that the applicant shall comply with the provisions of Section 437(3) of the Cr.P.C.

(MANINDER S. BHATTI)
JUDGE

vivek

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