IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE PRAMOD KUMAR AGRAWAL

ON THE 8th OF JANUARY, 2024

MISC. CRIMINAL CASE No. 51421 of 2023

BETWEEN:-

AKASH @ JUGUL KISHORE S/O RAMJI BANSAL, AGED ABOUT 25 YEARS, OCCUPATION: LABOUR R/O TILI WARD , POLICE STATION GOPALGANJ, SAGAR DISTRICT SAGAR (MADHYA PRADESH)

.....APPLICANT

(BY SHRI NEERAJ JAIN - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH POLICE STATION MOTINAGAR DISTRICT SAGAR (MADHYA PRADESH)**

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

.....RESPONDENTS

(BY SMT. SEEMA PANDEY - PANEL LAWYER)

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

ORDER

This is the first bail application filed by the applicant under Section 439 of the Code of Criminal Procedure for grant of regular bail relating to Crime No. 486/2023 registered at Police Station - Motinagar, District Bhopal (M.P.) for the offence punishable under Sections 363, 366, 376, 376 (2)(n), 376(2)(cha) of IPC and section 5/6 of POCSO Act. Applicant is in custody since 26/06/2023.

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As per the prosecution story, it is alleged that applicant has forcibly taken to the minor prosecutrix, below the 18 years of age with him on different places and committed rape upon her therefore, the aforesaid offence has been registered against the applicant.

Learned counsel for the applicant submitted that applicant is in jail since 26/06/2023. He has been falsely implicated. It is further submitted that from the entire prosecution story and statement of prosecutrix recorded u/s 164 of Cr.P.C. it is clear that prosecutrix was consenting party and went with the applicant on her own will. The prosecutrix u/s 164 of Cr.P.C. has stated that her mother forcibly tried to get her marriage with a 40 years old man therefore, she went with the present applicant. As per MLC report, there was no internal or external injury found on the body of prosecutrix. Charge sheet has been filed. The trial of the case will take considerable time. Therefore, it has been prayed that the applicant may be released on bail pending the trial.

On the other hand, learned Panel Lawyer has opposed the application for grant of bail and submitted that applicant had married with proseuctrix's mother. Applicant is step-father of the prosecutrix. Prosecutrix is not mentally fit as she suffers from mental disease. Applicant is step-father therefore, it was his duty to protect the minor prosecutrix but instead of protecting her, he forcibly took her with him. It is also submitted that from the statement recorded u/s 164 of Cr.P.C. it is clear that applicant allured the minor prosecutrix that he will keep her happy. It is further submitted that in supplementary statement the prosecutrix has narrated that applicant forcibly raped with her.

Looking to the facts of present case, it is clear that in this matter prosecutrix is a minor girl and applicant is her step-father. Prosecutrix was

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under treatment as she was suffering from mental decease therefore, it was the duty of applicant to protect her but he has committed rape upon her. Under such circumstances, I am of the view it is not a fit case to release the applicant on bail.

Accordingly, present bail application stands **dismissed**.

(PRAMOD KUMAR AGRAWAL)
JUDGE

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