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THE HIGH COURT OF MADHYA PRADESH
M.Cr.C.7380/2022

Through video conferencing

Gwalior, Dated: 10.02.2022

Shri Prakhar Dhengula, Counsel for the applicant.

Shri Lokendra Shrivastava, Counsel for the State.

Case diary is available.

This second application under Section 439 of Cr.P.C. has been filed for grant of bail. Previous application was dismissed by order dated 21.09.2021 passed in M.Cr.C. No.38174/2021.

The applicant has been arrested on 08.02.2021 in connection with Crime No.25/2021 registered at Police Station Civil Line Distt. Data for offence under Sections 363, 343, 376, 376 (2) (n), 120-B, 376 (d), 109, 366 of IPC and 5L/6, 5/17 of POCSO Act.

It is submitted by the Counsel for the applicant that although this Court in first bail application which was decided on 21.09.2021 passed in M.Cr.C. No.38174/2021 has taken note of the DNA test report but the prosecutrix has infact turned hostile. She has claimed that she was major and nothing was done and no offence was committed with her. It is further submitted that even the father of the prosecutrix has specifically claimed that the date of birth was not disclosed by him at the time of the admission of prosecutrix in school. Therefore, it is clear that the prosecution has failed to prove that the prosecutrix was minor on the date of incident and as the prosecutrix in school has turned hostile, at present there is no substantive evidence against the applicant.

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Heard the learned Counsel for the applicant.

The case in hand depicts very shocking state of affairs. The father of the prosecutrix had filed W.P. No.5723/2021 for medical termination of pregnancy of respondent no. 2 on the allegations that she is minor aged about 16 years and she was subjected to rape and, as a result, she became pregnant and the pregnancy of the prosecutrix will not be in the interest of her justice. This Court while deciding W.P. No.5723/2021 had requisitioned the case diary and statement was made by Shri Deepak Khot, Counsel for the State that the date of birth of prosecutrix as per school record is 02.04.2004, therefore, she is minor and as she was raped by the applicant, therefore, she has become pregnant.

Considering the minority, allegation as well as report submitted by the Medical Board which was constituted in compliance of order dated 10.03.2021 passed in W.P. No. 5723/2021, this Court permitted the medical termination of pregnancy. Now the prosecutrix has claimed that she is major and no offence was committed by the applicant. Thus, it is clear that either the prosecutrix has not narrated the truth before the Trial Court or the prosecutrix and her father has filed a writ petition on false averment that the prosecutrix was minor and she got pregnant from the applicant.

So far as the prosecution of prosecutrix and her father for giving false evidence before the Trial Court is concerned, it is yet to be decided by the Trial Court. Therefore, it is left to the discretion of

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the Trial Court. However in view of the evidence given by the prosecutrix and her father, it is clear that they had filed W.P. No.5723/2021 on incorrect averments, as a result, one unborn baby was killed. This conduct of the prosecutrix and her father cannot be tolerated.

Accordingly, issue show cause notice to the prosecutrix and her father Kunwarlal Yadav to show cause as to why they should not be punished for having committed contempt of Court by filing W.P. No. 5723/2021 on false avertments. Office is directed to register a separate case for Contempt of Court. The notice be served through Superintendent of Police, Datia.

List this Contempt Case **on 21st of February, 2022.**

So far as the merits of the case is concerned, Counsel for the applicant seeks permission of this Court to withdraw this application.

It is accordingly **dismissed as withdrawn.**

The Office is directed to immediately send a copy of this order to Principal District and Sessions Judge, Datia for communicating the same to the Trial Court for necessary information.

Let a copy of this order be given to the State Counsel for communicating the same to Superintendent of Police, Datia for necessary information and compliance.

(G.S. Ahluwalia)
Judge

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