

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE  
HON'BLE SHRI JUSTICE ANIL VERMA**

**ON THE 4<sup>th</sup> OF MAY, 2022**

**MISC. CRIMINAL CASE No. 18844 of 2022**

Between:-

ASHOK S/O NARAYAN BAGRI,  
OCCUPATION: LABOUR,  
R/O GRAM JUNI BHAI SLAAY,  
DISTRICT INDORE (MADHYA PRADESH)

**.....APPLICANT**

**(BY MR. KRISHNAKANT GHOSALY, ADVOCATE)**

**AND**

1. THE STATE OF MADHYA PRADESH,  
THROUGH STATION HOUSE OFFICER,  
POLICE STATION RAU,  
DISTRICT INDORE (MADHYA PRADESH)
2. VICTIM X,  
THROUGH P.S. RAU,  
DIST. INDORE (MADHYA PRADESH)

**.....RESPONDENTS**

**(R.NO.1 BY MR. HITENDRA TRIPATHI, DY. GA)  
(R.NO.2. BY MS.VEENA PARGI, ADVOCATE)**

*This M. Cr. C. coming on this day, the court passed the following:*

**O R D E R**

This is the third bail application under Section 439 of the Code of Criminal Procedure, 1973 filed on behalf of the applicant

for grant of bail. His first bail application i.e. M.Cr.C.No.2103/2021 was disposed of on 27/04/2021 and second bail application i.e. M.Cr.C. No.50669/2021 was dismissed as withdrawn on 09/12/2021. The applicant is in custody since 22/06/2018 in connection with Crime No.451/2017 registered at Police Station – Rau, District Indore (M.P.) for commission of offence punishable under Section 363, 366, 376(2)(i), 376(2)(n) and 506-II of the Indian Penal Code, 1860 read with Section 5(m)/6 and 5(l/6) of the Protection of Children from Sexual Offences Act, 2012.

As per prosecution story, the prosecutrix was minor and was 11 years of age at the time of incident. She knows the present applicant before the incident. The present applicant abducted the minor prosecutrix and kept her at his sister's village and committed rape upon her and threatened her to kill if she disclosed anyone about the incident. The sister of the prosecutrix lodged a missing person report in respect of the prosecutrix. Accordingly, crime has been registered against the present applicant.

Learned counsel for the applicant submits that the applicant is innocent person and he has been falsely implicated in this offence. He is in custody since 22/06/2018. Investigation is over and charge sheet has been filed. Nine witnesses including the prosecutrix have been examined by the prosecution. Medical evidence is not supporting the prosecution version. Final conclusion of the trial is likely to take sufficient long time. The applicant is

permanent resident of Indore district. Under the above circumstances, prayer for grant of bail may be considered on such terms and conditions, as this Court deems fit and proper.

*Per contra*, learned counsel for the respondent / State opposes the bail application and prays for its rejection by submitting that the prosecutrix was only 11 years of the age at the time of incident and she categorically stated in her statement against the present applicant. Hence, he is not entitled to be enlarged on bail.

Counsel for the objector also opposes the bail application and prays for its rejection.

I have perused the impugned order of the trial Court as well as the case diary.

Considering all the facts and circumstances of the case, nature and gravity of offence, arguments advanced by the learned counsel for the applicant and also taking note of the fact that as per the scholar register prosecutrix's date of birth is 08/03/2006, therefore, she was below 12 years at the time of incident. Prosecutrix has been examined before the trial Court and she has categorically stated in her statement that present applicant abducted and committed rape upon her several times.

At the stage of consideration of bail, marshalling of the prosecution witnesses is not permitted as per the judgment of Hon'ble Supreme Court in the case of *Satish Jaggi Vs. State of*

*Chattisgarh & Ors.* (Cr.A.No.651/2007) decided on 30/07/2007, wherein it has been held as under:-

*“At the stage of granting of bail, the Court can only go into the question of prima facie case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial.”*

As per the law laid down by the Hon'ble Supreme Court in **Satish Jaggi** (supra), this Court can only go into the question of the *prima facie* case established for granting bail. At the stage of consideration of bail, this Court cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. In the statement recorded before the trial Court, the prosecutrix has categorically stated against the present applicant about the aforesaid crime.

In view of the evidence available on record, as above, without commenting upon the merits of the case, at this stage, this Court is not inclined to enlarged the applicant on bail.

Accordingly, the third bail application filed by applicant under Section 439 of Cr.P.C. is dismissed.

Certified copy as per rules.

**(ANIL VERMA)**  
**J U D G E**