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

BEFORE

SHRI JUSTICE SUJOY PAUL

&

SHRI JUSTICE DWARKA DHISH BANSAL

ON THE 7th OF MAY, 2022

MISC. CRIMINAL CASE No. 14547 of 2022

Between:-

**THE STATE OF MADHYA PRADESH THROUGH
POLICE STATION HATTA BALAGHAT (MADHYA
PRADESH)**

.....APPLICANT

(BY SHRI S.K. KASHYAP, GOVT. ADVOCATE)

AND

**GOLU ALIAS JITENDRA KUTHE S/O LATE
SAKHARAM JI KUTHE , AGED ABOUT 26 YEARS,
RAJEGAON P.S. KIRNAPUR, DISTT. BALAGHAT
(MADHYA PRADESH)**

.....RESPONDENT

*This application coming on for grant of leave to appeal this day,
JUSTICE SUJOY PAUL passed the following:*

ORDER

Learned G.A. for the applicant-State is heard on the application for grant of leave to appeal filed under Section 378(3) of Cr.P.C. against the impugned judgment dated 22.09.2021 passed in S.C. No. 52/2020 by learned Special Judge (Protection of Children from Sexual Offences Act, 2012), Balaghat acquitting the respondent from the charges punishable under Sections 376-(A) (B), 377 of Indian Penal Code, Section 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 3(2)(5) of SC/ST (Prevention of Atrocities) Act.

Learned Govt. Advocate for the applicant-State submits that as per the finding of Court below the prosecutrix was aged about 10 years which is clear from para 10 of the impugned judgment. As per the provisions of Protection of Children from Sexual Offences Act and more particularly as per Section 29 & 30, there is a presumption of commission of crime unless proved otherwise.

During the trial, PW-9 Shri K.L. Barkade entered the witness box and

produced the DNA report which is in favour of the prosecution. Sadly, in the entire judgment there is no whisper about that DNA report which was even marked as Exhibit P-29. There is serious flaw in the judgment because of non consideration of a material scientific evidence.

We have seen the statement of PW-9 as well as Ex. P-29 (DNA report). There is no mention about this report in the entire judgment. Thus, a strong case is made out for grant of leave.

We accordingly, grant leave and direct the Registry to convert it into an appeal.

The copy of this order-sheet be sent to the Registrar General of this Court for placing the order before the appropriate committee on the administrative side so that appropriate action/decision may be taken against the erring judge for not considering a crucial medical evidence of DNA report in the impugned judgment.

Registry shall issue bailable warrant of **Rs. 25,000/- (Rupees Twenty five thousand only)** to the respondent for his presence on a date to be fixed by Registry before the Registry.

Accordingly, this M.Cr.C. is **disposed of**.

Pallavi

(SUJOY PAUL)
JUDGE

(DWARKA DHISH BANSAL)
JUDGE