

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL
ON THE 17th OF MAY, 2022

MISC. CRIMINAL CASE No. 22808 of 2022

Between:-
BABLESH PATEL

.....PETITIONER
(BY SHRI KAMLESH SINGH RAJPOOT, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH THROUGH POLICE STATION MAHILA
 THANA DISTRICT-SAGAR(M.P.) (MADHYA PRADESH)**
.....RESPONDENTS
(BY SHRI VIVEK LAKHERA, GA FOR STATE)

ORDER

This is **second** bail application filed on behalf of applicant/Bablesh Patel under Section 439 of CrPC in connection with Crime No.28/2021 under Sections 376, 376(2)(N), 506 of IPC and section 3,4,5J(ii), 5L POCSO Act and section 3(1)(w)(II), 3(1)(w)(II), 3(II)(V) of SC/ST Act registered at police station Mahila Thana, District Sagar and applicant is in custody since 03/11/2021. Earlier bail application (M.Cr.C No. 58753/2021) was dismissed as withdrawn with liberty to file application after prosecutrix is examined and FSL/DNA report is brought on record vide order dated 01/02/2022.

Shri Vivek Lakhera, learned G.A submits that though sample was sent on 15/12/2021 for DNA sampling but same is not available.

Learned counsel for the applicant submits that prosecutrix was examined before the trial court on 23/03/2022. She has turned hostile. She

has not supported the prosecution story. So also maternal grand mother and maternal uncle have turned hostile. They have not supported the prosecution story. There is no chance of prosecutrix being influenced and material prosecution witnesses have already been examined. Applicant is in custody since 03/11/2021. Trial will take time to conclude. Therefore, applicant be enlarged on bail.

Learned G.A for the State opposes the prayer made by learned counsel for the applicant.

Taking into consideration submissions of learned counsel for the parties and the fact that prosecutrix is already examined, she has not supported the prosecution story and applicant is in custody since 03/11/2021. Hence without commenting anything on merits of the case, this bail application is allowed. It is directed that **applicant Bablesh Patel** be released on bail on his furnishing a personal bond to the tune of **Rs.50,000/-** with two solvent sureties in the like amount to the satisfaction of the learned Trial Court. It is further directed that the applicants shall comply with the provisions of Section 437(3) of the Cr.P.C.

Prosecutrix has stated as under:-

आरोपी बबलेश से हमलोगों की काम को लेकर लडाई झगड़ा हो गया था । मेरे साथ में वहाँ पर अन्य लोग भी थे जो काम करते थे उनको मैं नहीं जानती और उनलोगों ने आवेदन बनवाकर मुझसे आवेदन पुलिस को दिलवाया था । मेरे साथ इसके अलावा और कुछ नहीं हुआ था ।

Trial court will consider issuance of a direction against the prosecutrix to refund the amount received by her because she admitted in her examination in chief that she has lodged false report on account of some oral dispute between the parties. Therefore, alleged false report is lodged, therefore she is not entitled to keep the amount of compensation paid by the

State government collected from the tax payer of the country. Thus, trial court will consider to direct the prosecutrix to refund that amount in the appropriate head of the treasury account.

In view of the outbreak of new mutant Omicron of Covid-19, the jail authorities and the State Government are directed to follow the guidelines issued by the Health Ministry in the wake of Novel Corona Virus before and after releasing the applicant.

In above term, this bail application is disposed of.

Certified copy as per rules

**(Vivek Agarwal)
Judge**