

HIGH COURT OF MADHYA PRADESH**MCRC-48144/2021****(Mahesh Kushwaha Vs. State of MP & Anr.)****Gwalior, Dated: 05.10.2021**

Shri Arun Barua, learned counsel for the applicant-**Mahesh Kushwaha**.

Shri G.P. Chourasiya, learned Public Prosecutor for the respondent/State.

This is the **second** bail application u/S.439 Cr.P.C filed by the applicant for grant of regular bail. Earlier application (Misc. Cri. Case No. 46472/2021) was dismissed as withdrawn vide order dated 21.09.2021.

Applicant has been arrested on 01.03.2021 by Police Station, Chanderi, District Ashok Nagar, in connection with Crime No.117/2021 for the offence punishable under Sections 376 (2)(cha), 376(3), 506 of IPC and Section 5 (n) / 6(a) and 11/12 of POCSO Act.

As per prosecution case, on 28.2.2021, prosecutrix aged about 12 years 13 days along with her family members lodged a report at Police Station Chanderi, District Ashoknagar, alleging that applicant/accused Mahesh Kushwaha, who was watering the field on 27.2.2021 at about 12 to 12.30 pm, showed nude video film through his mobile to the prosecutrix and after shutting her mouth took out her slacks and panty, thereafter he took out his own pant and underwear and lied down on her. On seeing her father coming to the spot applicant ran away. She narrated the incident to her parents. On her report, crime under Sections 376 (2)(cha), 376(3), 506 of IPC and Section 5 (n) / 6(a) and 11/12 of POCSO Act, bearing Crime No. 117/2021 was registered against the present applicant. The prosecutrix was sent for medical examination. The applicant/accused was arrested on 1.3.2021. After completion of investigation, charge

sheet has been filed under the aforesaid sections.

Learned counsel for the applicant by filing copies of the statements recorded of the prosecutrix (PW-1), her father Durga Prasad Kushwaha (PW-2) and her mother Kunwar Bai (PW-3), submits that neither the prosecutrix nor her parents supported the prosecution case. They were declared hostile. During cross-examination nothing came out which supports the prosecution story. Charge Sheet has been filed. The conclusion of trial will take its own time. The applicant undertakes to cooperate in trial and to abide by the conditions which may be imposed by this Court. On such premises, learned counsel for the applicant prayed for regular bail.

Learned counsel for the State opposed the application and prayed for its rejection.

Both the Advocates are heard. Case diary perused.

Looking to the facts and circumstances of the case as well as the evidence came on record coupled with the fact that the applicant is in custody since 1.3.2021, this Court is inclined to grant regular bail to the applicant. Therefore, it is directed that if the applicant furnishes bail bond of **Rs.50,000/- (Rupees Fifty Thousand only)** with one solvent surety in the like amount to the satisfaction of the trial Court, he be released on bail with the condition that the applicant will remain present during trial before the trial Court on each and every date.

Application stands allowed and disposed of.

Before parting with the case it is noticed that the Court below has disclosed the name of the prosecutrix, who is a rape victim, in the deposition which is inconsistent with the provision of Section 228A of Indian Penal Code and is in violation of the direction of Hon'ble Apex Court in the case of **Nipun Saxena vs. Union of India [(2019) 2 SCC 703]**.

In view of above, let a show cause notice be issued to the effect that why appropriate disciplinary action be not taken against the

Presiding Officer. Notice be sent through Principal District Judge, Ashoknagar (MP).

Copy of this order be sent to the Principal District Judge, Ashoknagar (MP) as well as to the trial Court concerned for compliance.

Certified copy as per rules.

(Deepak Kumar Agarwal)
Judge

(yog)



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