

HIGH COURT OF M.P. : BENCH AT INDORE

M.CR.C. No.41304/2021

Rakesh S/o Ambaram vs. State of M.P.

Indore : 09/09/2021 :-

Shri Amit Mittal, learned counsel for the applicant.

Shri Kapil Mahant, learned Panel Lawyer for the non-applicant/State.

Heard. Case-diary perused / challan papers.

ORDER

This is the **first** application under Section 439 of Criminal Procedure Code, 1973, as he is implicated in connection with Crime No.486/2018 registered at Police Station – Mahidpur, District – Ujjain (M.P.) for offence punishable under Section 363, 376, 376(2)(n), 376(3) of IPC and 3/4(2), 5(1)/6 of Protection of Children from Sexual Offences Act, 2012.

2. The applicant is in custody since 30/07/2021.

3. Story of prosecution is that on 22/11/2018 report was lodged by father of the prosecutrix of her having gone missing. After registration of FIR, investigation was conducted during course of which the prosecutrix was recovered from the custody of the applicant alongwith a boy aged about one and half year. The statement of prosecutrix was recorded in which she has stated that the applicant had taken her with him on a false pretext and promise to Surat, where he developed physical relationship with her resulting in birth of a son. Age of the prosecutrix at the time of incident was 15 years.

4. Learned counsel for the applicant submits that the prosecutrix had gone out on her own will with the applicant and has been living with him and she has also given birth to one child. She has left her father's protection knowing what she was doing, therefore, it could not be said that applicant had taken her away from the lawful guardianship of her parents. He relied upon the judgments of *Bombay High Court in criminal bail application No.2632/2019 (Anirudh Radheshyam Nagar vs. State of Maharashtra) decided on 09/01/2020* and in *bail application No.1036/2015 (Shri Mahadev Patil vs. State of Maharashtra) decided on 03/08/2015*. On these grounds prayer for grant of bail is made.

5. Learned Panel Lawyer for the State, on the other hand, has opposed the prayer submitting that at the time of incident the prosecutrix was aged 15 years, hence the question of consent would not arise. She had gone with the applicant on a false pretext and promise and was kept by the applicant for a considerable period of time. Thereafter she was recovered by the police. The conduct and actions of applicant do not entitle him for grant bail.

6. The prosecutrix though was aged about 15 years at the time when she went with the applicant but it appears that she had gone voluntarily out on her own will and continued to live with the applicant and has also given birth to a child. It cannot be said that even though she may be 15 years of age, she was not capable of knowing full impact of her act. She is also stated to be living with the applicant. In the facts of the case, I am thus of the considered view that it is a fit case for grant bail to the applicant. Accordingly, application of the applicant deserves to be allowed and it is hereby **allowed**.

7. The applicant is directed to be released on bail upon furnishing a personal bond in the sum of **Rs.1,00,000/- (Rupees One Lac)** with **one** solvent surety of the like amount to the satisfaction of the trial Court for his regular appearance before the trial Court during trial with a condition that he shall remain present before the Court concerned during trial and shall also abide by the conditions enumerated under Section 437 (3) Criminal Procedure Code, 1973.

8. It is also observed that if the applicant is found in any of the criminal activities, after his / her release on bail, then the present bail order shall stand cancelled without further reference to this Court; and the State / prosecution will be free to arrest the accused in the present case also.

9. This order shall be effective till the end of the trial, however, in case of bail jump, it shall become ineffective.

Certified copy as per rules.

(Pranay Verma)
Judge

Aiyer*