

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 6th OF DECEMBER, 2023

MISC. CRIMINAL CASE No. 51860 of 2023

BETWEEN:-



.....APPLICANT

(SHRI DANIEL ROBERT - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THROUGH P.S. BODA, DISTT. RAJGARH (MADHYA PRADESH)
2. VICTIM X THROUGH P.S. BODA, DIST. RAJGARH (MADHYA PRADESH)

.....RESPONDENTS

(SHRI AMIT RAWAL - GOVERNMENT ADVOCATE)

This application coming on for admission this day, the court passed the following:

ORDER

Applicant has filed this first bail application under Section 439 of the Code of Criminal Procedure, 1973 on behalf of the applicant for grant of regular bail relating to Crime No.59/2023 registered at P.S. Boda, District Rajgarh (M.P.) for commission of offence punishable under Sections 376(2)(n), 376(3), 376(1), 376(2)(f), 506 and 376(AB) of IPC and section 6 of POCSO Act. He is in jail since 05.03.2023.

2. As per the prosecution story, prosecutrix lodged an FIR at P.S. Boda, District Rajgarh by stating that two years prior to the incident, her father / present applicant naked her by putting off her clothes and committed rape upon her. On 03.03.2023, at about 2:30 AM, present applicant again repeated the same act and tried to rape her. Thereafter, she narrated the whole incident to her aunt. Accordingly, a case has been registered against the present applicant.

3. Learned counsel for the applicant submits that applicant is innocent person and he has been falsely implicated in this matter. Applicant is in jail since 05.03.2023. Prosecutrix has not supported the prosecution story in her cross-examination. She has turned hostile. Investigation is over and charge-sheet has been filed. Applicant is a permanent resident of District Rajgarh. Final conclusion of trial will take considerable long time. Under the above circumstances, prayer for grant of bail may be considered on such terms and conditions, as this Court deems fit and proper.

4. Per-contra, learned counsel for respondent/State opposes the bail application and prays for its rejection by submitting that it is a severe case of rape, which has been committed by a father on her own minor daughter, therefore, applicant does not deserve for bail.

5. Perused the case diary as well as the impugned order of the court below.

6. Considering all the facts and circumstances of the case, arguments advanced by counsel for the parties, nature and gravity of allegation as also taking note of the fact that prosecutrix (PW-3) has been examined before the trial Court and in para 2 to 5 of her deposition, she categorically stated against the present applicant regarding some obscene act done by the applicant including oral sex, outraging her modesty and commission of rape and also

intimidated her into non-disclosure of said act. Although it is to be noted that unfortunately later on she has not supported the case of prosecution in her cross examination, but the fact remains that her cross examination was conducted after 10 days of examination-in-chief, in which anyhow she has been win-over or influenced by her father / applicant and other family members. Although the statement of the prosecutrix is well supported by the MLC and as per MLC report, redness and swelling was found over the Labia Minora and Clitoris. Redness has also been found all over her private parts. In the query report, concerned Doctor clearly opined that hymen was found torn and swelled due to the extreme pressure of penis of someone. Trust and faith that a young girl would repose in her father and the sanctity of the very relationships were destroyed by debauched and devastating acts. It is a very unfortunate that in the instant case prosecutrix is a minor and innocent girl of 12 years of age and she was raped by her own father, which is a very heinous, inhumane and shameful act.

7. In view of the barbaric sexual assault and severity of the instant crime, without commenting on the merits of the case, this Court is not inclined to grant bail to the present applicant.

8. Accordingly, the first bail application filed by applicant under Section 439 of Cr.P.C. is rejected.

Certified copy as per rules.

(ANIL VERMA)
JUDGE