

MCRC-19070-2015

(SHIBBU @ SHIVENDRA GOUR Vs THE STATE OF MADHYA PRADESH)

30-11-2015

Shri Abhinav Dubey, learned counsel for the applicant.

Smt. Shobhna Sharma, learned Panel Lawyer for the respondent/State.

Heard arguments.

Perused case diary and material on record.

This is the second bail application filed by the applicant under Section 439 of the Cr.P.C. for grant of bail in connection with Sessions Trial No. 262/2015, corresponding to the Crime No. 366/15 registered at Police Station, Itarsi district Hoshangabad, against him and co-accused Likhiram for the offences punishable under Sections 450 and 376-D of the I.P.C. pending on the file of Additional Sessions Judge Itarsi, Hoshangabad.

Let it be noted that the applicant's first bail application is dismissed as withdrawn vide order dated 21.8.2015 passed by this court in M.Cr.C. No.9781/2015 subject to liberty that he may revive the prayer for bail after recording of the statement of prosecutrix in the trial court.

Prosecution allegations are that in the night of 25.5.2015 in a dilapidated house situated in Potarkholi area of Itarsi, the applicant and the co-accused committed gang-rape upon the prosecutrix.

Learned counsel for the applicant submits that the applicant has been in custody since 27.5.2015. It is also submitted by him that on 14.10.2015 the trial court has recorded the statement of prosecutrix as P.W.1 in which she has denied that the applicant has committed rape on her. It is also submitted by him that upon her

denial, the prosecution has declared him hostile. It is also submitted by him that this court has granted bail to co-accused Likhiram vide order dated 30.11.2015 passed in M.Cr.C. No.19018/2015. Upon these submissions learned counsel prays for grant of bail to the applicant in the changed circumstances of the case.

Learned Panel Lawyer has opposed the prayer.

On due consideration of the facts and circumstances of the case, the submissions raised on behalf of the parties by their counsel and upon the perusal of the statement of the prosecutrix, but without expressing any opinion on merits of the case, I am of the view that it is a fit case for grant of bail. Hence, the application is allowed. It is ordered that applicant **Shibbu alias Shivendra Gour** be released on bail on his furnishing a personal bond in the sum of **Rs.40,000/- (Rupees Forty Thousand only)** with one solvent surety of the same amount to the satisfaction of the court concerned for his appearance on all dates as may be fixed by it in this regard. The applicant shall abide by the conditions enumerated in Section 437(3) of the Cr.P.C. In case of bail jump, the court concerned will have power to cancel the applicant's bail.

Certified copy as per rules.

(RAJENDRA MAHAJAN)
JUDGE