

The High Court Of Madhya Pradesh

MCRC-7218-2020

(ARVIND JHARIYA Vs THE STATE OF MADHYA PRADESH AND OTHERS)

Jabalpur, Dated : 20-03-2020

Shri Vishal Daniel, learned counsel for the applicant.

Shri R.N. Shah, learned counsel for the objector.

Smt. Nalini Gurung, learned Panel Lawyer for the respondent/State.

Heard on this **first** application for bail under Section **439** of Cr.P.C. filed on behalf of the applicant. The applicant is in jail in connection with Crime No.07/2020 registered at Police Station Seoni, District Seoni for commission of offences punishable under Section 363, 366-A, 376 and 376 (3) of the IPC and Section 3 and 4 of POCSO Act.

The case of the prosecution against the applicant is that the prosecutrix, who was minor at the time of incident, went in the house of her maternal grand mother, but she was found missing from the house. Her relatives searched here and there, but not found her. Thereafter, her maternal grand mother lodged a missing person report. When prosecutrix recovered, she stated that the applicant said he likes her and wishes to marry her. Thereafter, he took her with him and developed sexual relations.

Learned counsel for the applicant submits that age of the prosecutrix recorded in matriculation certificate is not reliable. She took the admission in class 10th in the year 2018. Her date of birth recorded as 04.07.2004. At that time her age was 14 years. When child gets admission in the class 1st, he/she must have completed age of 5 years. He further submits that considering this fact date of birth recorded in the high school certificate is questionable. She was consenting party. She was major at the time of incident. After investigation, charge-sheet has been filed and the applicant is in judicial custody since 14.01.2020 and conclusion of the trial will take considerable time, therefore, it has been prayed that the applicant may be released on bail.

Learned counsel for the objector and Panel Lawyer for the respondent/State, on the other hand, has opposed the application and submits

that prosecutrix was minor at the time of incident. The applicant took the prosecutrix forcibly with him and committed rape upon her. She categorically stated this fact in her statement. There is strong case found against the applicant; therefore, prays for dismissal of this application for bail.

Heard learned counsel for the parties and perused the case diary.

Keeping in view the facts and circumstances of the case, particularly, after perusal of the statement of prosecutrix recorded under Section 164 of Cr.P.C. and her date of birth recorded in the high school certificate as well as arguments advanced by learned counsel for the applicant, in the opinion of this Court, it is a fit case to enlarge the applicant on bail.

Consequently, this application for bail under Section 439 of the Code of Criminal Procedure filed on behalf of applicant-**Arvind Jhariya**, stands **allowed**.

It is directed that the applicant shall be released on bail on furnishing a personal bond in the sum of **Rs.50,000/-(Rupees Fifty Thousand Only)** with one solvent surety in the like amount to the satisfaction of the trial Court for his appearance before that Court on all dates fixed in the case and for complying with the conditions enumerated under Section 437 (3) of the Code of Criminal Procedure.

Certified copy as per rules.

(VISHNU PRATAP SINGH CHAUHAN)
JUDGE

pnm