

The High Court Of Madhya Pradesh**CRA-5182-2020***(KHURSHEED ALAM Vs STATE OF M.P. AND OTHERS)***Jabalpur, Dated : 27-11-2020****Heard through Video Conferencing.**

Shri Qasim Ali, learned counsel for the appellant.

Shri Dharmendra Kaurav, learned Panel Lawyer for the respondent No.1-State.

Learned P.L. for the respondent No.1/State informed to the Court that notice has been served upon victim-A/respondent No.2.

This Criminal Appeal under Section 14-A of the SC/ST (Prevention of Atrocities) Act filed by the appellant being aggrieved by the order dated 20.08.2020 in Bail Application No.2993/2020, passed by learned Special Judge SC/ST (Atrocities) Act, Bhopal, District-Bhopal, whereby bail application of appellant filed under Section 439 of Cr.P.C. has been rejected.

At this juncture, it is pertinent to mention that earlier the appellant has filed the M.Cr.C.No.30840/2020 for grant of bail which has been dismissed as withdrawn with liberty to file appeal.

The appellant is in custody since 18.07.2020, in connection with Crime No.372/2020, registered at Police Station Shahpura, District-Bhopal (M.P.) for the offences punishable under Sections 376, 376 (2)(n), 366-A, 120-B, 354, 370 (1), 377, 109 and 212 of IPC, Sections 4/3 and 5(l)/6 of POCSO Act, Section 3 (1)(w)(i), 3(1)(w)(ii) and 3(2)(v) of SC/ST (Prevention of Atrocities) Act, Sections 75, 77 and 77 of Juvenile Justice (Care and Protection of Children from Sexual Offences) Act, 2015 and Section 25 and 27 of Arms Act.

As per prosecution case, in the intervening night of 11-12/07/2020, during patrolling, five girls/prosecutrix are found intoxicated. Police taken them into custody and referred for counseling. Informant-Anita Mishra and others conducted counseling of aforesaid prosecutrix and found that they all are minor on the date of incident. On the information given by Anita Mishra,

FIR has been registered mentioning therein that an incident is said to have taken place on 11.07.2020 at about 10:30 in the night in Flat No.12, situated at Vishnu Heights, Shahpura, Bhopal, which belongs to co-accused-Pyare Miyan. It is mentioned in the FIR that the informant-Anita Mishra met all the prosecutrix and got information that on 11.07.2020, all the prosecutrix had visited the flat of co-accused-Pyare Miyan in order to celebrate birthday of one prosecutrix and where they all consumed alcohol and thereafter, it is so alleged that co-accused-Pyare Miyan committed sexual intercourse with one prosecutrix. It is further mentioned in the FIR that co-accused-Pyare Miyan had committed sexual intercourse with the said prosecutrix various times prior to said incident and he had also committed sexual intercourse with another prosecutrix and also tried to make same offence with another prosecutrix. Allegation against the present appellant is that he has aided the main accused-Pyare Miyan in moving out from Bhopal in his own vehicle and helped him in getting Rs.25,000/-. It is further alleged that present appellant was also involved in hiding the vehicle of the main accused-Pyare Miyan.

Learned counsel for the accused/appellant submits that accused/appellant is a government servant being teacher and has been falsely implicated in the case whereas he has not committed any offence. It is submitted by the counsel that learned Court below failed to appreciate the submission of appellant in proper manner. In the case, no cogent and plausible evidence is available to make out the aforesaid offences against the present appellant. In the FIR, the name of appellant is not mentioned and thereafter, on the basis of memorandum of co-accused, he has been made as an accused in the case, which is not admissible in the law. Appellant was unaware of any foul alleged to be played by co-accused-Pyare Miyan. The name of present appellant has not been taken by any of prosecutrix. Allegation regarding sexual intercourse is against co-accused-Pyare Miyan. The appellant is having distant relation with co-accused-Pyare Miyan and was not aware of any activities being done by him. Appellant's mother was

suffering from old age infirmities and no one is available to take care of her. Charge-sheet has been filed and on account of effect of ongoing COVID-19 pandemic, trial will take sufficient time in its conclusion. The appellant is in custody since 18.07.2020, he can not be kept behind the bars for indefinite period. There is no possibility of his absconding or tampering with the prosecution evidence. Appellant is ready to furnish bail as per the order, abiding with all conditions imposed by the Court. On these grounds, learned counsel for the appellant prays for grant of bail to the appellant.

Per-contra, learned Panel Lawyer opposes the bail application.

Heard.

On perusal of material annexed with bail application as well as charge-sheet, it appears that the appellant has been arrested in the case for helping the co-accused-Pyare Miyan moving out from Bhopal giving Rs.25,000/-. He has also helped in hiding the vehicle belongs to co-accused-Pyare Miyan. The present appellant was not named in the FIR and on the basis of memorandum of co-accused, he has been impleaded in the case. There is no such allegation regarding sexual assault with the prosecutrix levelled against the present appellant.

Considering the act attributed to present appellant in the case and looking to the fact that appellant is a government servant, charge-sheet has been filed and on account of spread of COVID-19 pandemic, trial will take sufficient time in its conclusion, but without commenting on merits of the case, application of the appellant under Section 14-A of SC/ST (Prevention of Atrocities) Act, seems to be acceptable. Consequently, it is hereby **allowed** and impugned order is hereby set-aside.

It is directed that **appellant-Khursheed Alam** be released on bail on his furnishing bail bond in the sum of **Rs.50,000/-(Rupees Fifty Thousand)** with one surety of the same amount to the satisfaction of the concerned trial Court for his appearance before the trial Court on the dates given by the concerned Court. It is directed that the appellant shall comply with the

provisions of Section 437(3) of the Cr.P.C.

In view of the outbreak of 'Corona Virus disease (COVID-19)' the appellant shall also comply the rules and norms of social distancing. Further, in view of the order passed by the **Hon'ble Supreme Court in suo moto W.P.No.1/2020**, it would be appropriate to issue the following direction to the jail authority :-

1. The Jail Authority shall ensure the medical examination of the appellant by the jail doctor before his release.

2. The appellant shall not be released if he is suffering from 'Corona Virus disease'. For this purpose appropriate tests will be carried out.

3. If it is found that the appellant is suffering from 'Corona Virus disease', necessary steps will be taken by the concerned authority by placing him in appropriate quarantine facility.

Certified copy as per rules.

(RAJENDRA KUMAR SRIVASTAVA)
JUDGE

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