

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE ROHIT ARYA
ON THE 29th OF DECEMBER, 2022
MISC. CRIMINAL CASE No. 61847 of 2022**

BETWEEN:-

**RAHEES KHAN S/O SHRI HAMID KHAN, AGED ABOUT
26 YEARS, OCCUPATION: LABOUR POOJA BIHAR
COLONY APAGANJ LASHKAR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI AMIT GOSWAMI - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH INCHARGE POLICE
STATION THROUGH POLICE THANA MADHOGANJ
(MADHYA PRADESH)**

.....RESPONDENTS

***(BY SHRI ROHIT SHRIVASTAVA - PANEL LAWYER FOR THE STATE AND
SHRI RISHIKESH BOHRE - ADVOCATE FOR THE OBJECTOR)***

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

ORDER

This is the first application filed by the applicant under Section 439 of the Cr.P.C. for grant of bail.

The applicant has been arrested by Police Station - Madhoganj, District Gwalior in connection with Crime No.589/2022 registered in relation to the offence punishable under Sections 376, 376(2)(N), 506 of IPC.

An FIR has been lodged at crime case No.589/2022 at police station Madhoganj on 18.12.2022 on an allegation that the applicant sexually abused the prosecutrix on 18.09.2020 i.e. about two years and three months ago.

Accordingly, the case has been registered.

Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated. The applicant has no criminal antecedents. As a matter of fact that applicant and prosecutrix, both major, have been staying in live-in-relationship. In fact, applicant intended to marry to prosecutrix also but for the reasons well known to the prosecutrix, she has taken extreme stand of having lodged the instant complaint against the applicant, pursuant to which the applicant is suffering jail custody since 19.12.2022. On the face of the allegations made in the FIR, no case is made out for offence under Sections 376, 376(2) (N), 506 of IPC. Hence, under such circumstances, the applicant may be enlarged on bail on such terms and conditions this Court deems fit and proper.

Per contra, learned counsel appearing for the State submits that no exception can be taken in the matter of enlargement on bail as the applicant has indulged in immoral activity and sexually abused the prosecutrix. However, learned counsel does not dispute that both applicant and prosecutrix are major. The alleged incident is of 18.09.2020, whereas the FIR has been lodged on 18.12.2022. No explanation forthcoming for undue delay in lodging the FIR.

Learned counsel appearing for the objector though does not dispute that applicant and prosecutrix have been staying in live-in-relationship but alleged betrayal on the part of applicant in the matter of solemnized marriage purportedly due to opposition of parents.

Upon hearing learned counsel for the rival parties but without commenting upon the rival contentions touching merits of the case, regard being had to the obtaining facts and circumstances, the applicant is held entitled for enlargement on bail.

Consequently, the application of the applicant filed under Section 439 of

the Criminal Procedure Code, 1973 is hereby allowed. It is directed that the applicant be released on bail on furnishing personal bond in the sum of **Rs.2,00,000/- (Rupees Two Lacs only)** with one solvent surety in the like amount to the satisfaction of the learned Trial Court and on the condition that he shall remain present before the Court concerned during trial and also comply with the conditions enumerated under Section 437 (3) of Criminal Procedure Code, 1973 with following further conditions:

(i) the applicant shall abide by the terms and conditions of various circulars and orders issued by the Government of India and the State Government as well as the local administration from time-to-time in the matter of maintaining social distancing, physical distancing, hygiene, etc., to avoid proliferation of Novel Corona virus (COVID-19);

(ii) the concerned jail authorities are directed that before releasing the applicant, the medical examination of the applicant be conducted through the jail doctor and if it is *prima facie* found that he is having any symptoms of COVID-19, then the consequential follow up action or any further test required, be undertaken immediately. If not, the applicant shall be released on bail in terms of the conditions imposed in this order;

(iii) on violation of conditions, State is free to apply for cancellation of bail.

(iv) in future, if the applicant is found to be involved in such nature of cases or any other similar criminal cases or misuses the bail granted by this Court, this bail order shall stand cancelled automatically.

Learned Public Prosecutor is directed to send an e-copy of this order to all the concerned including the concerned Station House Officer of the Police

Station for information and necessary action.

E-certified copy as per rules.



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(ROHIT ARYA)
V. JUDGE

