

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL
ON THE 28th OF FEBRUARY, 2022

MISC. CRIMINAL CASE No. 5947 of 2022

Between:-

HIMANSHU @ MINTU DAY

.....PETITIONER

(BY SHRI SUNIL MISHRA, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH THROUGH P.S.
BUDHAR SHAHDOL (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI AMIT MISHRA, PANEL LAWYER)

This first bail applicant has come up for hearing on admission on this day, the court passed the following:

ORDER

This is **first** bail application is filed on behalf applicant-Himanshu alias Mintu Day under Section 439 of Code of Criminal Procedure, 1973 for grant of bail who is in jail since 13/12/2021 in connection with Crime No.893/2021 registered at Police Station Budhar, District Shahdol (M.P.) under sections 363, 366A, 376(2) (n) of IPC and also under Section 5/6 of POCSO Act.

It is submitted that applicant is 22 years of age. Date of birth of prosecutrix is 28/10/2005, incident took place on 02/12/2021. It is also submitted that prosecutrix in her statement under Section 164 of Cr.P.C. has clearly mentioned that prosecutrix has studied upto 10th class. Her parents wanted to marry her somewhere else and she was against that marriage, therefore, she had moved out from her house along with present applicant. In her statement under Section 164 of Cr.P.C., she has categorically mentioned that applicant had not established any physical relationship with her. Hence, prayer is made to enlarge the applicant on bail.

Per contra, Shri Amit Mishra, learned Panel Lawyer opposes the bail

application and submits that S.H.O. had tried to collect record from the first school which was attended by prosecutrix but it was found that school is closed. He had written a letter to the Headmaster of said school but record could not be retained.

Prosecutrix, in her statement under Section 164 of Cr.P.C., in her first sentence, has mentioned that she studied upto 10th Class. I.O. of the case, instead of approaching the school from where prosecutrix had passed 10th Class examination, was trying to dig roots where prosecutrix had taken admission in KG-I. This clearly indicates that Investigation Officer is not trained to conduct investigation. It also indicates lack of proficiency.

Let DGP, Madhya Pradesh, take action against concerned I.O. as they are not only inefficient, but, many a times are ignorant of basic common sense required to conduct investigation as is made out from the statement given by Shri Amit Mishra, learned Panel Lawyer.

Let copy of this order be sent to Director General Of Police to seek explanation from Superintendent of Police, Shahdol as to who was appointed as I.O. in the matter of Crime No.893/2021 and why he was wasting his time and resources in a wrong direction without taking into consideration a fact that prosecutrix in her statement under Section 164 of Cr.P.C. has clearly mentioned that she had studied up to 10th Class.

Let Director General of Police, Madhya Pradesh is requested to take appropriate remedial measures to send Investigating Officers for training.

After hearing learned counsel for the applicant and taking into consideration statement made by Shri Amit Mishra, learned Panel lawyer that there is history of four criminal cases i.e. Crime No.622/2018 under Sections 354, 294, 306, 34 of IPC & 7/8 of POCSO Act, Crime No.711/2018 under Sections 107, 110(3) of IPC, Crime No.491/2019 under Sections 454, 380 of IPC and the present case, this Court is of the opinion that this is a fit case to enlarge the applicant on bail inasmuch as prosecutrix in her statement under Section 164 of Cr.P.C. has categorically mentioned that she had left her home on her own volition because her parents wanted to marry her against her will without permitting her to attain the age of majority for which offence could have been registered against her parents and

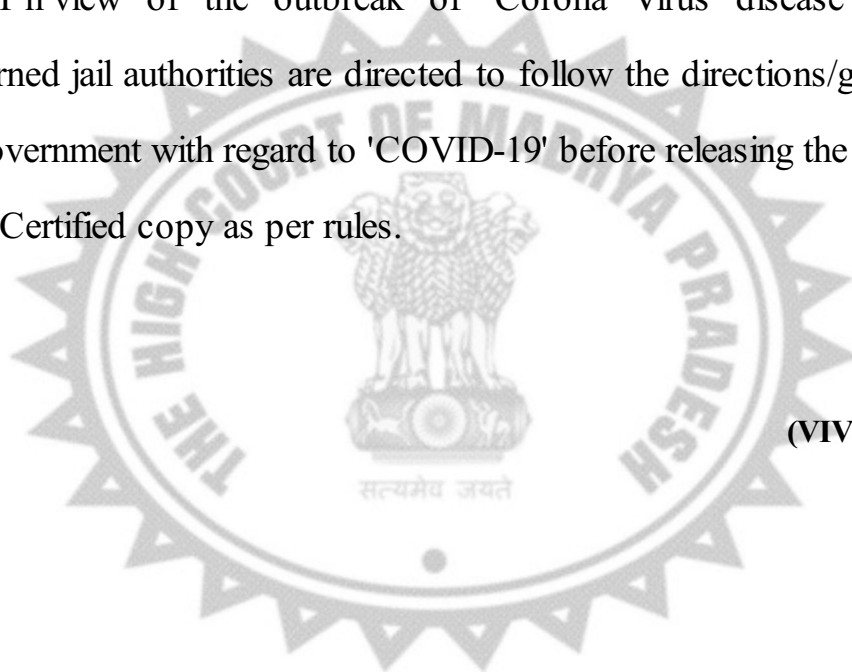
not the present applicant, this application is **allowed**.

It is directed that applicant shall be released on bail upon his furnishing a personal bond in the sum of **Rs.50,000/- (Rupees Fifty Thousand Only)** along with two solvent sureties in the like amount to the satisfaction of the concerned Court for his appearance before the Trial Court on all such dates as may be fixed in this behalf by the trial Court during the pendency of trial. It is also directed that the applicant shall comply with the provisions of Section 437(3) Cr.P.C.

This order shall remain effective till the end of the trial but in case of bail jump and breach of any of the pre-condition of bail, it shall become ineffective and cancelled without reference to this Bench.

In view of the outbreak of 'Corona Virus disease (COVID-19)' the concerned jail authorities are directed to follow the directions/guidelines issued by the Government with regard to 'COVID-19' before releasing the applicant.

Certified copy as per rules.



(VIVEK AGARWAL)
JUDGE