

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

**BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

ON THE 5th OF SEPTEMBER, 2022

MISCELLANEOUS CRIMINAL CASE No. 41646 of 2022

Between:-

**MEHARBAN KHAN, S/O SHRI MEHBOB KHAN,
AGED -25 YEARS, R/O- SCINDIA NAGAR, NEAR
MARGHAT PAHADI, MEHALGAON, GWALIOR,
DISTRICT- GWALIOR (MADHYA PRADESH)**

.....APPLICANT

(BY SHRI ATUL GUPTA- ADVOCATE)

AND

**STATE OF MADHYA PRADESH THROUGH
POLICE STATION -UNIVERSITY, DISTRICT-
GWALIOR (MADHYA PRADESH)**

.....RESPONDENT

(SHRI C.P.SINGH- PANEL LAWYER FOR THE STATE)

(SHRI S.P.S.GURJAR- ADVOCATE FOR THE COMPLAINANT)

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

ORDER

Case Diary is available.

This fifth repeat application under Section 439 of Cr.P.C. has been filed for grant of bail. Fourth application was dismissed as withdrawn by order dated 28/03/2022 passed in MCRC No.11670/2022.

The applicant has been arrested on 11/03/2021 in connection with Crime No.12/2021 registered at Police Station University, District Gwalior for offence under Sections 376, 354, 195-A, 506 of IPC and Section 67-A of the Information Technology Act.

It is submitted by the counsel for the applicant that he has filed the order-sheets of the Trial Court, which clearly indicates that the prosecutrix is not appearing. On 23/05/2022, presiding officer was on leave and only on that day, the prosecutrix appeared which clearly indicates that the prosecutrix is religiously following and watching proceedings and is deliberately avoiding her appearance. It is further submitted that on 23/05/2022, the prosecutrix was bound over for 21/06/2022 and in the margin of the order-sheet, the prosecutrix has also signed the order-sheet but thereafter, she did not appear. Thus, it is clear that she is deliberately staying away from the Court with some ulterior motive in order to enter into some kind of negotiations. The Trial is likely to take sufficiently long time and there is no possibility of his absconding or tampering with the prosecution case.

Per contra, the application is vehemently opposed by the counsel for the State as well as counsel for the complainant. It is submitted that the previous bail applications of the applicant have already been dismissed on merits. It is further submitted that the applicant had sent obscene photographs of the prosecutrix to her brother and a video has also been seized.

It is submitted by the counsel for the complainant that in fact the prosecutrix had appeared on subsequent dates but her presence was not marked.

Shri Gurjar was unable to justify the submission made by him. No written application with affidavit has been filed in this regard. On a query, it is submitted by Shri Gurjar that he may be granted some time to verify the said fact from the local counsel. Thus, it is clear that the submission made by Shri Gurjar is after thought without any basis. Even otherwise, if the prosecutrix was present, then there was no reason for the Trial Court not to record her evidence

or not to record her presence. On the contrary, it appears from the statement of the counsel for the complainant that although, the complainant is visiting the Court premises but she is not deliberately entering inside the Court room for giving her evidence. The intention behind the prosecutrix are only known to the prosecutrix. However, when the complainant is deliberately staying away from the Court and is avoiding giving her evidence for no reason, then the applicant cannot be allowed to languish in jail on the basis of ill intentions of the prosecutrix.

Considering the period of detention and without commenting on the merits of the case, the application is allowed. It is directed that the applicant be released on bail on furnishing a personal bond in the sum of **Rs.1,00,000/- (Rupees One Lac)** with one surety in the like amount to the satisfaction of the Trial Court/Committal Court to appear before the Court on the dates given by the concerned Court.

This order shall remain effective till the end of trial but in case of bail jump, it shall become ineffective.

In the light of the judgment passed by the Supreme Court in the case of **Aparna Bhat and others Vs. State of M.P.** Passed on **18.03.2021** in **Criminal Appeal No. 329/2021**, the intimation regarding grant of bail be sent to the complainant.

Certified copy as per rules.

(G.S. AHLUWALIA)
JUDGE