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

**BEFORE
HON'BLE SHRI JUSTICE ATUL SREEDHARAN**

ON THE 23rd OF JANUARY, 2023

MISC. CRIMINAL CASE No. 485 of 2023

BETWEEN:-

**SOMU @ SOMANT S/O SHRI KAPTAN SINGH YADAV, AGED
ABOUT 20 YEARS, OCCUPATION: STUDENT R/O VILLAGE TODA
P.S. KARERA, DISTRICT SHIVPURI (MADHYA PRADESH).**

.....APPLICANT

(BY SHRI ASHA RAM SHIVHARE - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH THROUGH POLICE STATION
KARERA, DISTRICT SHIVPURI (MADHYA PRADESH).**

.....RESPONDENT

(BY SHRI B.S. BAZEETA - GOVERNMENT ADVOCATE)

MISC. CRIMINAL CASE No. 1105 of 2023

BETWEEN:-

**GABBAR SINGH S/O FARSRAM YADAV, AGED ABOUT 22 YEARS,
R/O GRAM TODA KARERA POLICE STATION KARERA, DISTRICT
SHIVPURI (MADHYA PRADESH)**

.....APPLICANT

(BY SHRI RAJMANI BANSAL - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH THROUGH POLICE STATION
KARERA DISTRICT SHIVPURI (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI B.S. BAZEETA - GOVERNMENT ADVOCATE)

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

ORDER

Both the applications for bail filed under Section 439 of the Cr.P.C. are being disposed of by this common order as the same have arisen from the same crime number, police station and the offences.

These third applications under section 439 of the Code of Criminal Procedure, 1973 have been filed for grant of bail to applicants in connection with Crime No.661/2020 for the offences punishable under sections 376, 506 read with Section 34 of the I.P.C. and Section 66-D of the Information Technology Act registered at Police Station Karera, District Shivpuri. Applicant Gabbar Singh is in judicial custody since 08.07.2021 and applicant Somu @ Somant is in judicial custody since 20.03.2021.

The earlier application moved by a co-accused which was also dismissed by this Court, was challenged before the Supreme Court which was dismissed by the Supreme Court granting co-accused Jeetu certain liberties. However, it is stated before this Court and not disputed by the learned counsel for the State that the applicants have never challenged the order of dismissal of their earlier applications before the Supreme Court. The first application of applicant Somu @ Smant was dismissed as withdrawn vide order dated 24.3.2022 passed in M.Cr.C. No.11805/2022 with liberty to revive the prayer along with the complete order sheets of the trial Court. The second application of applicant Somu @ Somant is dismissed as withdrawn vide order dated 27.9.2022 passed in M.Cr.C. No.45361/2022. The first and second applications of applicant Gabbar Singh are dismissed on merits vide order dated 15.11.2022 passed in M.Cr.C. No.43372/2021 and vide order dated 18.7.2022 passed in M.Cr.C. No.34493/2022 respectively.

As stated hereinabove, the applicants have never preferred an appeal before the Supreme Court against previous bail applications which were dismissed by this Court. The earlier orders of this Court dismissing the bail applications of the applicants herein did not consider the DNA report. In the case of applicant- Gabbar Singh, the existence of the DNA report was brought to the notice of this Court earlier and it has been

recorded so in its order. However, there has been no finding or observation *prima facie* by the Co-ordinate Bench as to why the DNA report notwithstanding, bail could not be granted to the applicants? Learned counsel for the applicant has also shown that his second application was only dismissed on the ground that the applications of co-accused persons Badda @ Azad Singh Singh Yadav and Jitendra were dismissed by the Co-ordinate Bench earlier. The DNA report has been filed by applicant Sumo. The said DNA report shows a perfect match with all the 25 genetic markers of co-accused Saheb Singh, the relevance of which shall be discussed hereafter. As far as the applicants herein are concerned, the DNA report absolves them of involvement by disclosing that their genetic markers do not match the genetic markers found in the semen stains of the undergarments of the prosecutrix.

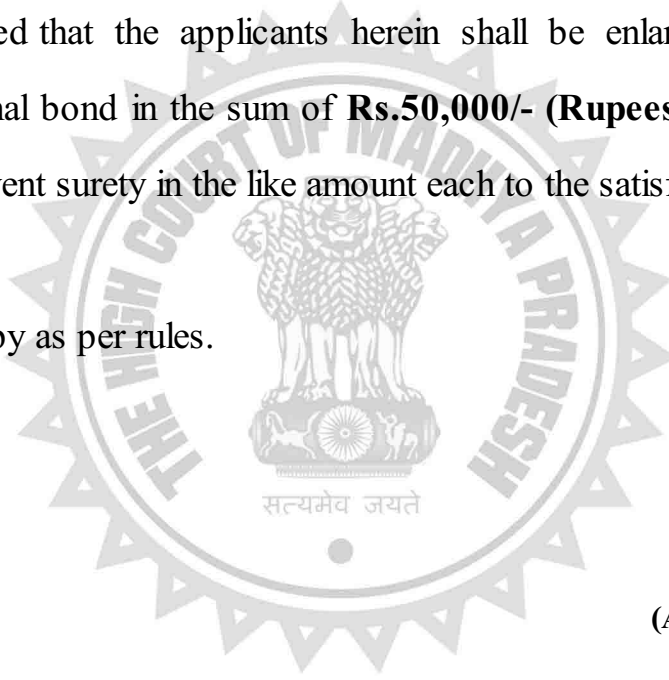
Now coming to the *prima facie* relevance of the DNA report, the incident is alleged to have taken place on 8.11.2020 and the FIR is lodged on 9.11.2020 in which only the name of co-accused Saheb Singh is mentioned and role is only attributed to him. The 161 statement also recorded on 9.11.2020 of the prosecutrix also levels allegation of rape only against co-accused Saheb Singh. On 10.11.2020, the 161 statement of the prosecutrix is recorded in which the present applicants have also been roped as the co-accused persons. The prosecutrix states that she had mentioned about their names to the police but the police had refused to record them. Thereafter, the contention of the learned counsel for the applicant is that the applicants have falsely been implicated in this case and their names have been taken subsequently only in the 164 statement of prosecutrix recorded on 10.11.2020 and a subsequent 161 statement recorded on 26.11.2020. The DNA report assumes relevance as the same only corroborates statement of the prosecutrix given to the police in the FIR under 161 statement restricted to Saheb Singh, who is the only named accused in the FIR and the 161 statement recorded on 9.11.2020.

Further reference to the statement of the investigating officer who had seized the incriminating video alleged to have been shot by the co-accused Saheb Singh and sent to the prosecutrix on the basis of which she was being blackmailed for further sexual favours, shows only the co-accused Saheb Singh and not the applicants herein, as so stated by PW-7 Hema Gautam (Investigating Officer) in her testimony before the trial Court.

Be that as it may, looking to the facts and circumstances of the case and what has been discussed herein above by the learned counsel for the applicant, the application is allowed.

It is directed that the applicants herein shall be enlarged on bail upon their furnishing a personal bond in the sum of **Rs.50,000/- (Rupees Fifty Thousand Only)** each with one solvent surety in the like amount each to the satisfaction of the learned trial court.

Certified copy as per rules.



(ATUL SREEDHARAN)
JUDGE

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