

HIGH COURT OF MADHYA PRADESH : INDORE BENCH
BEFORE

HON'BLE SHRI JUSTICE SATYENDRA KUMAR SINGH

ON THE 26th OF AUGUST, 2022

MISC. CRIMINAL CASE No. 39950 of 2022

Between:-

- RAMBABU S/O SHRI DEVBAKSH CHANDRAWANSHI, AGED**
1. ABOUT 50 YEARS, OCCUPATION: AGRICULTURIST GRAM
MANDAWAR, TEHSIL NARSINGHGARH (MADHYA PRADESH)
ASHOK CHOUDHARI S/O GOVIND CHOUDHARI, AGED ABOUT
2. 37 YEARS, OCCUPATION: TRACTOR MACHENIC GRAM
MANDAWAR, TEHSIL NARSINGHGARH DISTRICT RAJGARH
(MADHYA PRADESH)

.....PETITIONER

***(SHRI RAJENDRA KUMAR BATHAM, LEARNED COUNSEL FOR
THE APPLICANT)***

AND

- 1. THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER**
THROUGH POLICE STATION BODA (MADHYA PRADESH)
2. VICTIM X THROUGH POLICE THANA BODA, DISTRICT
RAJGARH (MADHYA PRADESH)

.....RESPONDENTS

***(SHRI RAJESH JOSHI, LEARNED GOVT. ADVOCATE FOR
RESPONDENT/STATE)***

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

ORDER

This is a repeat (2nd) application filed under Section 439 of Cr.P.C. by the applicants who is in custody since 14.2.2022 in connection with Crime No.47/2022 registered at Police Station Boda, District Rajgarh for the offence punishable under Section 376, 450, 506, 376(2)(n), 376(d), 354(c)/34 of the IPC; u/s. 66(e), 67(a) of the Information Technology Act; and u/s. 5(1)/6, 5(g)/6 and Section 11 of the Protection of Children from Sexual Offences Act.

After arguing for some time, learned counsel for the

applicants seeks permission to withdraw this application in respect of applicant No.2 – Ashok Choudhary S/o. Govind Choudhary.

Prayer allowed. This application in respect of applicant No.2 – Ashok Choudhary S/o. Govind Choudhary is dismissed as withdrawn.

Heard the learned counsel for the parties on this repeat application filed u/s. 439 of the Cr.P.C. in respect of applicant No.1 – Rambabu S/o. Devbaksh Chandrawanshi.

Applicant No.1's first application was dismissed on merit vide order dated 7.7.2022 passed in M.Cr.C. No.18584/2022.

The prosecution case, in brief, is that on 29.11.2021 at about 13 pm. when the prosecutrix was alone at her house, co-accused Kamlesh entered into her house and forcefully committed rape upon her. He also threatened her not to disclose about the incident to anyone, otherwise he will kill her and her family members. During investigation, the prosecutrix in her statement recorded u/s. 164 of the Cr.P.C. stated that the present applicant along with other co-accused persons threatened her to disclose her obscene videos viral and committed mass rape upon her.

Learned counsel for the applicant submits that initially the FIR was lodged against the co-accused Kamlesh wherein the prosecutrix did not disclose the name of present applicant. The FIR is hopelessly delayed by 2½ months without any reasonable cause. The statement of the prosecutrix as well as her father have been recorded wherein both of them have denied to identify the present applicant. There is nothing else against the present applicant. He is in custody since 14.2.2022 and the trial will take long time to conclude, therefore, in view of the aforesaid changed circumstances the applicant is entitled for bail.

Learned Public Prosecutor for the respondent/State opposed

the prayer and submits that the applicant along with other co-accused persons committed mass rape with the prosecutrix. The offences alleged against him are serious in nature. After dismissal of the first bail application on merit, there is no circumstantial change in the matter, therefore, he is not entitled for bail.

Having considered the rival submissions, material pointed out by the learned counsel for the applicant, period of custody of the applicant and also considering the statement of the prosecutrix along with her father, without expressing any opinion on the merits of the case, this Court is of the view that the applicant No.1 Rambabu deserves to be released on bail and it is allowed.

It is directed that applicant No.1 – Rambabu S/o. Devbaksh Chandrawanshi be released on bail on his furnishing personal bond in the sum of Rs.50,000/- (Fifty Thousand) with a solvent surety of 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 pendency of the trial. It is further directed that the applicant No.1 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 concerned Jail Authority is directed to follow the directions/guidelines issued by the Government with regard to COVID-19 before releasing the applicant.

With the aforesaid the application is allowed and stands disposed of.

C.C. as per rules.

(SATYENDRA KUMAR SINGH)
JUDGE

Alok/-