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

**BEFORE
HON'BLE SHRI JUSTICE SANJAY DWIVEDI
ON THE 5th OF DECEMBER, 2022**

MISC. CRIMINAL CASE No. 51888 of 2022

BETWEEN:-

1. YASH SAHGAL S/O SANJAY KUMAR SAHGAL,
AGED ABOUT 24 YEARS, OCCUPATION: STUDENT
R/O SAHGAL BUNGALOW MADHAVNAGAR GATE
POLICE STATION MADHAVNAGAR DISTRICT
KATNI (M.P.)
2. SAKSHAM BHASIN S/O VINAY BHASIN, AGED
ABOUT 24 YEARS, OCCUPATION: PRIVATE JOB
R/O HOUSING BOARD COLONY POLICE STATION
MADHAV NAGAR DISTRICT KATNI (MADHYA
PRADESH)

.....APPLICANTS

(BY SHRI SOURABH BHUSHAN SHRIVASTAVA - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH
POLICE STATION MAHILA THANA DISTRICT
KATNI (M.P.) (MADHYA PRADESH)
2. VICTIM A S/O NOT MENTION THROUGH
CONCERNING POLICE STATION (MADHYA
PRADESH)

.....RESPONDENTS

**(RESPONDENT/STATE BY SHRI AKHILENDRA SINGH - GOVERNMENT
ADVOCATE)**

(RESPONDENT/OBJECTOR BY SHRI PRIYANK AGRAWAL - ADVOCATE)

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

ORDER

This first application under Section 439 of the Code of Criminal
Procedure has been filed on behalf of the applicants for grant of bail in

connection with Crime No.04/2021 registered at Police Station Mahila Thana, District Katnia, for the offence punishable under Sections 376(2)(j), 376(2)(k), 376(2)(i), 376(2)(n), 376(2)(f), 376(D)(A), 376-D, 376(3), 376(2)(f)(n) of the Indian Penal Code and Sections 5(g), 5(l), 5(n), 5(m) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 67-A of the Information Technology Act.

Learned counsel for the applicants submits that the applicants are in jail since 02.05.2022. He submits that in the alleged offence earlier a regular bail application was moved on behalf of the applicants before the trial Court wherein they were enlarged on regular bail vide order dated 09.03.2021, but subsequently, on an application for cancellation of bail moved on behalf of the respondent/objector, the applicants' bail was cancelled by this Court vide order dated 18.04.2022 passed in M.Cr.C. No.16087/2021. He submits though against the said order, the applicants preferred a SLP before the Supreme Court, but the Supreme Court dismissed the SLP observing therein that the applicants, under the changed circumstance, will be at liberty to move a fresh application. However, the trial Court was also directed to conclude the trial within a period of one year.

Shri Shrivastava, learned counsel for the applicants submits that the material witnesses have been recorded and as such, it is a changed circumstance under which this application has been filed in light of the liberty granted by the Supreme Court. On the basis of statement of material witnesses recorded before the Court below, learned counsel for the applicants has tried to establish a case that the applicants have been falsely implicated in the alleged offence whereas no such crime was committed by them. He has also tried to

establish that there is some property dispute between the parties as a land measuring 18000 square feet is in possession of the family of the applicants and because of the same, the complainant party is falsely implicating the applicants so as to create pressure upon them to settle the dispute of property as per their own terms and conditions. Learned counsel for the applicants submits that from the written complaint, it is clear that it was made at the instance of uncle of the prosecutrix who is a member of Indian Administrative Service and in fact, the prosecutrix was not aware of the fact that as to what is the content of the complaint. Learned counsel for the applicants submits that from perusal of statement of witnesses, *prima facie*, it can be gathered that because of some dispute between the parties, the applicants have been made accused in the alleged offence. He further submits that this Court may also consider the facts like the conduct of the applicants as they after cancellation of their bail, surrendered before the police and since the material witnesses have already been recorded and there is no chance for influencing the witnesses who are yet to be recorded, keeping the applicants behind the bars would not serve any purpose. On these submissions, he prays that the applicants may be enlarged on bail.

On the other hand, learned Government Advocate has opposed the prayer of bail and submitted that from the statement of the witnesses, it is clear that they have supported the case of prosecution. He has submitted that it was a case of gang rape with a minor and considering the fact that bail granted to the present applicants on earlier occasion was cancelled by this Court and that order has also been affirmed by the Supreme Court giving liberty to the applicants to file a fresh application under the changed circumstances, this application deserves dismissal because the prosecution witnesses in their statement have supported the case of prosecution.

Shri Priyank Agrawal, learned counsel for respondent/objector has also supported submissions advanced by learned Government Advocate and submitted that the intention of the Supreme Court while giving liberty to revive the application under the changed circumstances does not mean when the witnesses in their statement have supported the case of prosecution even then the application can be considered. He has submitted that statement of prosecutrix makes it clear that as to why she could not lodge the report in time. He has also submitted that in the existing circumstances when the witnesses in their statement have supported the case of prosecution, it cannot be considered to be a changed circumstance and as such, this application is not maintainable. Had it been a situation where the witnesses were not stick with their statement, then only it would have been a changed circumstance, but here the situation is otherwise. He has also submitted that the Supreme Court has already directed the trial Court to conclude the trial and till now considering the progress reported in trial, it is expected that trial would be completed within the given time that too till the month of May, 2023, therefore, at this stage, it would be proper to enlarge the applicants on bail.

Considering the submissions advanced by learned counsel for the parties, perusal of case diary, looking to the nature of crime and the fact that trial Court has already been directed to conclude the trial within a period of one year, I am of the opinion that at this stage no reason arises to consider this application. Accordingly, it is hereby **rejected**.

However, it is expected from the trial Court that the trial will be concluded within the time as specified by the Supreme Court and if that is not done, then the applicants will be at liberty to revive their prayer of bail.

Devashish

