

Jitu @ Jitendra Soni vs The State Of Madhya Pradesh on 26 September, 2022

Author: Vivek Rusia

Bench: Vivek Rusia

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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE VIVEK RUSIA
ON THE 26th OF SEPTEMBER, 2022
MISC. CRIMINAL CASE No. 38024 of 2022

BETWEEN: -

JITU @ JITENDRA SONI S/O LATE SHRI
JAGJEEVANDAS SONI, AGED ABOUT 65 YEARS,
OCCUPATION: BUSINESS, R/O 1170, ALOK NAGAR,
KANADIA ROAD INDORE (MADHYA PRADESH)

.....APPLICANT

(SHRI SATYENDRA KUMAR VYAS ALONGWITH MS.NEHA YADAV,
LEARNED COUNSEL FOR THE APPLICANT)

AND

THE STATE OF MADHYA PRADESH STATION
HOUSE OFFICER THROUGH POLICE STATION
MAHILA THANA INDORE (MADHYA PRADESH)

.....RESPONDENT

(SHRI KAMAL KUMAR TIWARI, LEARNED GOVERNMENT ADVOCATE
FOR THE RESPONDENT/STATE.

MS DRISHTI RAWAL, LEARNED COUNSEL FOR THE RESPONDENT
[OBJ].

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

ORDER

This first application under Section 439 of Cr.P.C. for grant of bail filed by the applicant who is in custody since 03.07.2020 in connection with Crime 154/2019 registered at Police Station Mahila Thana, Indore for the offence punishable under Section 376, 376-D, 377, 342, 323, 506, 34, 109 of I.P.C. And under Section 66-E of Information Technology Act.

The bail application of the co-accused Rajendra Manilal Thakkar who happens to be husband of prosecutrix has been granted bail by this Court vide order dated 31.05.2021 in M.Cr.C. No.3830/2021. Against which SLP No.4195/2021 was filed by the prosecutrix and the same has

been dismissed vide order dated 04.03.2022, thereafter another co-accused Shivam has been granted bail by this Court vide order dated 07.05.2022. The prosecution story stated in the M.Cr.C. No.3830/2021 which was decided on 31.05.2021 is as under:

"The report has been lodged by wife of applicant on 14.12.2019 in which she has made an allegation that three years earlier i.e. in the year 2016 she alongwith her husband i.e. the applicant and her two children begotten from earlier husband had come from Mumbai to Indore in order to attend programme of Garba. The prosecutrix alongwith applicant and her children stayed at Hotel Best Western at Indore. However midway when the programme was still going on the applicant asked her to return to the hotel. The prosecutrix when returned to the hotel the applicant alongwith co-accused Jitu Soni and his henchman came inside and all committed gang rape with her. When the co-accused Jitu Soni was committing such act, the applicant was recording the incident on his video camera. Due to fear the prosecutrix could not report the matter and the next day they all of them came back to Mumbai. She could not report because of threat meted out to her. In the FIR it has been stated that she came to know that the applicant is indulging in trafficking of females alongwith co-accused Jitu Soni and applicant worked for Jitu Soni in furthering his illegal and immoral activities which also includes money laundering. These two persons have accumulated and hoarded black money and benami immovable properties. It has been stated that Jitu Soni the co-accused runs his illegal activities from Mumbai with the help of present applicant.

In the journey from Indore to Mumbai it has not been mentioned by the prosecutrix at any point of time that any incident had occurred, instead, the prosecutrix accompanied the applicant back to Mumbai and during her return journey, photographs have been taken showing herself to be completely normal and happily giving poses and even posted pictures on Facebook on the same day. The reasons assigned by the applicant is that the prosecutrix wants to take revenge against the applicant as the applicant has filed a complaint against her brother for committing offence of cheating and till date the brother of complainant is in judicial custody. The complainant has filed several criminal cases and tried to arrest him but in each of these cases the applicant's bail application has been allowed. Even after the alleged incident the prosecutrix had lodged FIR in Malad Police station in respect of crime no. 369/2018 at Mumbai but no mention was made regarding the incident at Indore. The aforesaid case was registered under the provisions of Section 498A, 377, 379 and section 67A of IT Act. It has been stated that charge sheet has been filed against the applicant, that the complainant's elder son has also made allegations against the applicant regarding his sexual exploitation and such report was lodged at Mumbai whereas no such report was lodged at Indore. There is an unexplained delay of three years in lodging of FIR and the complainant has lodged number of cases against the applicant which also includes case under Domestic Violence Act at Mumbai and in these circumstances bail has been sought to be allowed." Shri Vyas, learned senior counsel for the applicant submits that the entire prosecution story is concocted story.

There is delay of three years in lodging the FIR against the applicant and her husband. The incident was said to have taken place in the night of 10.11.2016 to 11.11.2016 between 02.30 am to 05.00 am. The information was given on 14.12.2019 at about 20:15 without explaining the delay in the FIR. During this period, the prosecutrix has lodged as many as six FIR against her husband. The details of FIR are mentioned in the Memo of bail application in para 6.3, therefore, it cannot be said that the prosecutrix was not aware about the right to lodge the FIR. It is further submitted that co-accused Rajendra Thakkar had booked five air tickets, for attending the program and meeting his two business partners, Mr. Ravindra Bhatia and Mr. Satyendra, viz, his, complainant, her two sons and his business partner, Bhushan Koli from Mumbai to Indore on 10.10.2016 (Departure timing from Mumbai airport at 19.35 and arrival time to Indore Airport at 20.55) and five return tickets from Indore to Mumbai dated 11.10.2016 (Departure timing from Indore airport at 19.35 and arrival time to Mumbai Airport at 20.55). It is further submitted that on 10.10.2016, the complainant had posted a message "Gonna have a musical nite @ Pankhida Navatri Nite" on her Facebook account. On, 10.10.2016, all of them reached Mumbai domestic airport around 6pm and reached Indore Airport around 09:00 pm. Mr. Ravinder Bhatia had come to Indore Airport to pick them and from Airport, all of them reached Hotel Best Western, Indore around 9.45 pm/10 pm. The hotel arrangement was done by the present applicant. Four rooms were booked, one room for complainant and her husband/co-accused, one room for her two sons, one room for Bhushan Koli and one room for Satyendra Singh and his wife, Pooja. They reached the venue approximately around 10.15 pm in the program. All had enjoyed the program and the program ended around 1.45 am to 2am of 11.10.2016.

complainant and her two sons clicked many photos on their mobile device. Bhushan Koli and Satendra Singh had also clicked photographs from their mobile around 12.58 am of 11.10.2016.

After attending the program, the prosecutrix alongwith her two children did shopping and reached to the airport at 06:00 pm to catch the flight to Mumbai. During their stay, they captured various photographs and uploaded in their Facebook account. If this serious incident happened with her, she would not in position to attend the musical nite as well as shopping. Police have registered numbers of criminal cases against the applicant for that reason applicant has been added in this case. He is having parity with the co-accused/husband against which SLP has been dismissed.

Government advocate opposes the the aforesaid prayer and for its rejection.

Ms. Rawal, learned counsel for the objector opposes the aforesaid prayer by submitting that this applicant is not having parity with the husband of the prosecutrix. The applicant is habitual offender as many as 50 FIR were registered against him. If he released on bail there is every possibility to tamper with the evidence. The material collected from the Facebook account is liable to be examined by the trial court under provision of Evidence Act. Hence, bail application is liable to be dismissed.

Heard.

So far as allegation committed by the applicant and co-accused/ is concerned, same is identical. The material which has been considered for grant of bail to the co-accused/husband is same. There is no specific denial by the objector that photographs filed in this bail application are not taken from the Facebook account. Prima facie, it appears that on the date and time, when the offence said to have committed, she was attending the musical nite alongwith her two kids from 10.30 pm to 2.45 am. She alongwith husband wished Dushera by way of caption in her Facebook account immediately after the alleged incident.

Considering the facts and circumstances of the case but without commenting on the merit of the case, the application is allowed and applicant is directed to be released on bail upon his furnishing personal bond in the sum of Rs.2,00,000/- (Rupees Two Lac only) with surety in the like amount to the satisfaction of the Trial Court for his appearance before that Court during the pendency of trial and shall also abide by the conditions enumerated under section 437(3) Cr.P.C.

C.c as per rules.

(VIVEK RUSIA) JUDGE praveen