

# Rubi Khata vs The State Of Madhya Pradesh on 9 September, 2021

**Author: Gurpal Singh Ahluwalia**

**Bench: Gurpal Singh Ahluwalia**

THE HIGH COURT OF MADHYA PRADESH MCRC No.44547/2021 (RUBI KHATA VS. STATE OF M.P.) Gwalior dtd. 09/09/2021 Shri Vivek Kumar Vyas, learned counsel for the applicant. Shri A.K.Nirankari, learned counsel for the State. Case diary is available.

This is second repeat bail application filed under Section 439 of Cr.P.C. for grant of bail. The first bail application of the applicant was allowed temporarily by order dated 03/06/2021 passed in MCRC No.25904/2021.

The applicant has been arrested on 27/02/2021 in connection with Crime No.51/2021 registered by Police Station Kotwali, District Morena for offence punishable under Sections 363, 365 of IPC and Section 11/13 of MPDVPK Act.

It is submitted by the counsel for the applicant that the applicant is the resident of West Bengal and she is an innocent person. She was not aware of the fact that co-accused Rohit Tomar was already married to the complainant. The allegations of kidnapping the minor child of the complainant from her custody is false. The applicant is ready and willing to abide by any stringent condition, which may be imposed by this Court.

Per contra, the application is vehemently opposed by the counsel for the State. It is submitted that earlier the applicant was granted temporary bail for a period of two months, however, the applicant has not filed the copy of surrender certificate, therefore, it THE HIGH COURT OF MADHYA PRADESH (RUBI KHATA VS. STATE OF M.P.) is not known as to whether the applicant has surrendered after the temporary bail/parole is over or not.

In reply, it is submitted by the counsel for the applicant that since, the temporary bail was granted on furnishing cash surety of Rs.1,00,000/- and she could not make arrangement for the same, therefore, she has not availed the benefit of temporary bail. It is submitted that the applicant is ready and willing to furnish two local sureties.

Heard the learned counsel for the parties.

The applicant is the resident of West Bengal. Even the counsel for the applicant is not sure as to whether the applicant would return back to State of M.P. for attending the trial or not. It is true that an accused can be released on bail on furnishing personal bond as well as one/two sureties of the same amount, however, it is equally true that in case, if the applicant does not return back or does not attend the Court proceedings, then surety would be liable to deposit the surety amount and in

case, if they fail to do so, then their property shall be liable to be auctioned.

Under these circumstances, where there is a possibility that the applicant may not return back to State of M.P. after her release, then she cannot be granted bail without cash surety. The applicant has not availed the interim bail granted to her only because of the ground that she has not furnished the cash surety of Rs.1,00,000/-, therefore, it is clear that the applicant is not ready and willing to THE HIGH COURT OF MADHYA PRADESH (RUBI KHATA VS. STATE OF M.P.) abide by any stringent condition, which may be imposed by the Court.

Further, the allegations against the applicant are that she has kidnapped an eight months old daughter of the complainant. If the contention of the applicant that she was not aware of the fact that Rohit Tomar is already married with the complainant is considered, then it is clear that while kidnapping the minor child aged about 8 months, the applicant was well aware of the fact that at least she is not the mother of the said child and under these circumstances, she should not have kidnapped her.

Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that no case is made out for grant of bail.

Accordingly, the application fails and is hereby dismissed.

Arun\*

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(G.S.Ahluwalia)  
Judge