
(2020) 08 MP CK 0119

Madhya Pradesh High Court

Case No: Miscellaneous Criminal Case No. 28135 Of 2020

Mahila Phoolabai

APPELLANT

Vs

State Of Madhya
Pradesh

RESPONDENT

Date of Decision: Aug. 26, 2020

Acts Referred:

- Indian Penal Code, 1860 - Section 375, 376, 376(2), 376(2)(i), 376(2)(n)
- Code Of Criminal Procedure, 1973 - Section 439
- Protection Of Children From Sexual Offence Act, 2012 - Section 3, 4
- Prohibition Of Child Marriage Act, 2006 - Section 9(a), 10

Hon'ble Judges: Vishnu Pratap Singh Chauhan, J

Bench: Single Bench

Advocate: Rajendra Shrivastava, Neeraj Ashar

Final Decision: Dismissed

Judgement

Heard on this fourth application has been filed by the applicant under Section 439 of the Code of Criminal Procedure for grant of bail to the applicant.

The applicant is in custody since 23/6/2019 in connection with Crime No.201/2019 registered at Police Station, Baldeogarh, District Tikamgarh for the

offence punishable under Sections 376(2)(i), 376(2)(n) of the Indian Penal Code, Section 3 read with Section 4 of POCSO Act and also under Section

9(a) read with Section 10 of Prohibition of Child Marriage Act.

The case of prosecution, in short, is that, prosecutrix who was 11 years old at the time of incident and the applicant being near relative i.e. Bua of the

prosecutrix administered some intoxicated substance to her and forcibly solemnized marriage with co-accused Devi who was 35 years old and after

marriage co-accused Devi kept prosecutrix with him and forcibly committed rape upon her saying that she is his wife and he repeatedly committed

rape upon her for three days. When she went back to her house, she narrated the matter to her mother and her mother lodged the report. Three

applications of the applicant for grant of bail had been dismissed. Third application was dismissed vide order dated 4/3/2020 passed in M.Cr.C.

No.9868/2020 after considering the statement of the prosecutrix recorded during trial.

Learned counsel for the applicant submits that no particular charge has been framed against the applicant and the applicant being a lady cannot be

prosecuted for the offence of rape. Learned counsel for the applicant has placed reliance on the judgment of Hon'ble Apex Court in the case of Priya

Patel Vs. State of M.P. and another, (2006) 3 Crime 86 and submits that Hon'ble Apex Court held that no woman can be prosecuted under Section

375 read with Section 376(2) of IPC.

On the other hand, learned Panel Lawyer opposes the aforesaid prayer and submits that there is amendment in Section 375 of IPC and POCSO Act.

The facts of that case is on different footing to the facts of the present case. He further submits that previous bail applications have been dismissed on

merit after considering the statement of prosecutrix. There is no change circumstance found, therefore, prays for dismissal of the bail application.

Having heard learned counsel for the parties.

The incidence happened in the month of May, 2019 when the POCSO Act has been enforceable and new amendment in Sections 375 and 376 of IPC

has been incorporated.

After considering the previous orders, it reveals that this Court discussed all the facts on merit and the said orders passed after recording the

statement of prosecutrix. In these circumstances, this Court does not find any change in circumstance for accepting this fourth application filed under

Section 439 of Cr.P.C.

Accordingly, this application is dismissed.