

(2021) 05 MP CK 0080

Madhya Pradesh High Court (Gwalior Bench)**Case No:** Criminal Appeal No.3002 Of 2021

Bablu Gurjar

APPELLANT

Vs

State Of M.P. & Others

RESPONDENT

Date of Decision: May 13, 2021**Acts Referred:**

- Code Of Criminal Procedure, 1973 - Section 161, 164, 301(2), 439
- Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989 - Section 3(1)(w)(i), 3(2)(va). 14A(2)
- Indian Penal Code, 1860 - Section 363, 366, 376
- Protection Of Children From Sexual Offences Act, 2012 - Section 5, 6

Hon'ble Judges: Vishal Mishra, J**Bench:** Single Bench**Advocate:** Arshad Ali, Vijay Sundaram**Final Decision:** Allowed

Judgement

Vishal Mishra, J

Heard on I.A.No. 14555/2021 an application filed under Section 301(2) of Cr.P.C. for seeking assistant to the prosecution.

The application is allowed. Shri Vijay Pratap Singh Tomar, Advocate, is permitted to assist the prosecution.

Heard the learned counsel for the parties through Video Conferencing.

Present appeal has been filed under Section 14-A (2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter

would be referred as "the Act") against the order dated 08.04.2021 passed by the Additional Sessions Judge Gwalior whereby the bail application

of the appellant under Section 439 of Cr.P.C has been rejected.

The appellant is in custody since 20.01.2021 in connection with Crime No.1/2021 registered at Police Station Bhawarpura, District Gwalior for the offence punishable under Sections 363, 366, 376 of IPC r/w 5/6 of POCSO Act and 3(1)(w)(i), 3(2)(va) of SC/ST.Act.

It is alleged that it is a case of consent. The appellant as well as the complainant have already solemnized marriage and now the complainant is residing

with her husband happily. She was recovered from her matrimonial house from Registrar. Her statement before the Court has also been recorded

wherein she has supported the prosecution story. Appellant is in custody since 20.01.2021. There is further requirement of custodial interrogation of

the appellant and prays for grant of bail. As far as the age of the victim is concerned, it is submitted that she herself has stated that she is major, aged

about 19 years. But the documents clearly reflect that the victim was minor on the date of commission of offence. Appellant is the first offender. The

appellant is ready to abide by all the terms and conditions which may be imposed by this court while considering the application for grant of bail.

Counsel for the appellant has relied upon the orders passed by this Court in M.Cr.C.No.16785/2020 dt.25.06.2020 and M.Cr.C. 17908/2020 dated

14.07.2020.

Per contra, Counsel appearing for the respondent No.2 submits that he has no objection if the appellant is enlarged on bail because the victim has

solemnized marriage with the appellant.

Counsel for the State opposed the application stating that age of the victim on the date of the commission of the offence was 15 years and she was

admittedly a minor as per the records. There is no meaning of consent if the victim is a minor. She has supported the prosecution story in her

statements recorded under Sections 161 and 164 of Cr.P.C. He has prayed for dismissal of the application.

Taking into consideration the overall facts and circumstances of the case and also the fact that the Hon'ble Supreme Court considering the present

scenario of Covid pandemic -19, has passed an order dated 07.5.2021 in SUO MOTU W.P. (C) No.1/2020 wherein certain direction have been issued

for release of prisoners even under trial prisoners. Although the consent of the minor is having no value and the offence against the appellant is clearly

made out but looking to the fact that the statements of the victim has already recorded before the trial Court and looking to the present scenario of

Covid pandemic -19, this Court deems it appropriate to enlarge the appellant for bail on interim basis for a period of 90 days. Appellant is being

directed to be released on interim bail for a period of 90 days (from the date of his release) subject to the verification of the fact he is the first

offender and on furnishing bail bonds in the sum of Rs.50,000/-(Rs. Fifty Thousand Only) with one solvent surety of the like amount to the satisfaction

of the Investigation Officer/trial Court, as the case may be with submission of written undertaking and the appellant will abide by all terms and

conditions of the different circulars, orders as well as guidelines issued by the Central Government, State Government as well as Local Administration

for maintaining social distancing, hygiene etc to avoid Novel Corona Virus (COVID -19) pandemic and he will have to install Arogya Setu App, if not

already installed. The appellant shall surrender before trial Court, concerned on completion of 90 days from the date of release and information to this

effect shall be sent by the court concerned to Registry of this court.

This order will remain operative subject to compliance of the following conditions by the appellant :-

1. The appellant will comply with all the terms and conditions of the bond executed by him;

2. The appellant will cooperate in the investigation/trial, as the case may be;

3. The appellant will not indulge himself in extending inducement, threat or promise to any person acquainted with the facts of the case so as to

dissuade him from disclosing such facts to the Court or to the Police Officer, as the case may be;

4. The appellant shall not commit an offence similar to the offence of which he is accused.

5. The appellant will not seek unnecessary adjournments during the trial; and

6. The appellant will not leave India without previous permission of the trial Court/Investigating Officer, as the case may be.

7. The appellant will inform the concerned S.H.O. of concerned Police Station about his residential address in the said area and it would be the duty of the Dy. Advocate General to send E-copy of this order to SHO of concerned police station as well as Superintendent of Police of the concerned District who shall inform the concerned SHO regarding the same.

Application stands allowed.

In view of the COVID-19, jail authorities are directed that before releasing the appellant, medical examination of appellant shall be undertaken by the jail doctor and on prima facie, if it is found that he is having the symptoms of COVID-19, then consequential follow up action including the isolation/quarantine or any test if required, be ensured, otherwise appellant shall be released immediately on bail and shall be given a pass or permit for movement to reach his place of residence.

Copy of this order be sent to the trial Court concerned for compliance.