

**THE HIGH COURT OF MADHYA PRADESH****M.Cr.C. No.12712/2020***(Kadar Khan Vs. State of M.P.)*

---

**Gwalior, Dated:-28/05/2020**

Shri Shailendra Singh Kushwah, learned counsel for the applicant.

Shri C.P. Singh, learned Panel Lawyer for the respondent/State.

Matter is heard through video conferencing.

The applicant has filed this first bail application u/S.439 Cr.P.C for grant of bail. Applicant has been arrested on 21.10.2019 by Police Station Khariya, Distt. Gwalior (M.P.) in connection with Crime No.91/2019 registered for offence under Sections 363, 366, 376-D, 506 of IPC and under Sections 5-G & 6 of POCSO Act.

It is submitted by learned counsel for the applicant – Kadar Khan that the applicant has not committed any offence. The applicant is in custody since 21.10.2019 i.e. from more than seven months. Learned counsel for the applicant submitted that on the last date of hearing, it was directed by this Court to produce the marksheet of the prosecutrix, but due to present COVID-19 condition, he is not able to produce the certified copy of marksheet of the prosecutrix. It is further submitted that on the date of incident, the age of prosecutrix was more than 18 years and as per statement given under Section 164 of Cr.P.C., the case is of full consent. No inculpatory evidence has been given by the prosecutrix in her statement recorded under Section 164 of Cr.P.C. The date of birth of prosecutrix is 10.01.2001 as per statement given

**THE HIGH COURT OF MADHYA PRADESH****M.Cr.C. No.12712/2020***(Kadar Khan Vs. State of M.P.)*

---

by her under Section 164 of Cr.P.C. Applicant is ready to abide by any condition which may be imposed by this Court. Hence, prays for grant of bail.

Learned State counsel has vehemently opposed the prayer and has submitted that present applicant is the main accused of this case. There are two marksheets of prosecutrix available on record wherein date of birth of the prosecutrix has been mentioned differently. One marksheet is of Class 1<sup>st</sup> wherein her date of birth is mentioned as 10.01.2002, and another marksheet is of Class 5<sup>th</sup> wherein date of birth is mentioned as 10.01.2001. It is further submitted that according to the Class 1<sup>st</sup> marksheet, on the date of incident, the prosecutrix was not major. Hence, prayed to reject the bail application of the applicant.

At this stage, learned counsel for the applicant further submitted that since as per prosecution there are two marksheets showing different date of birth of prosecutrix, therefore, benefit with regard to age of prosecutrix be given to the applicant. It is also submitted that in the statment recorded under Sections 161 & 164 of Cr.P.C., no adverse evidence against the present applicant has been given by the prosecutrix. Now investigation is complete and charge-sheet has been filed. There is no progress in the trial due to present COVID-19 condition. Hence, prays for grant of bail to the applicant.

**THE HIGH COURT OF MADHYA PRADESH****M.Cr.C. No.12712/2020***(Kadar Khan Vs. State of M.P.)*

---

Heard learned counsel for the parties at length through VC and considered the arguments advanced by them and perused the case diary.

It is apparent from record that the case is registered against the present applicant under Sections 363, 366, 376-D, 506 of IPC & under Sections 5-G & 6 of POCSO Act and the present applicant is the main accused of this case. At this juncture, age verification of the prosecutrix could not be done, but looking to the allegations levelled against the applicant and the facts and circumstances of the case, at this stage, it is not appropriate to grant bail to the applicant.

Consequently, this application stands **rejected** with liberty to the applicant to file fresh application after recording of evidence of prosecution witnesses.

Trial Court is hereby directed to proceed further in the case as early as possible.

**E- copy** of this order be sent to the trial Court concerned for information.

(Rajeev Kumar Shrivastava)  
Judge