

HIGH COURT OF MADHYA PRADESH

M.Cr.C. No.31444/2021

(Mayank Tiwari Vs. State of M.P.)

Gwalior, Dated:28.06.2021

Shri Ravi Dwivedi and Atul Gupta, learned counsel for the applicant.

Shri N.K.Gupta, learned Public Prosecutor for the respondent/State.

Shri F.A.Shah, learned counsel for complainant.

Heard through Video Conferencing.

The applicant has filed this first bail application u/S.438, Cr.P.C. for grant of bail. Applicant is apprehending his arrest in respect of registration of crime No.308/2021 registered at Police Station Gole Ka Mandir, District Gwalior, in relation to the offence punishable under Section 376(2)(n) of IPC.

It is the submission of learned counsel for the applicant that applicant is apprehending his arrest on the basis of registration of offences referred above. It is further submitted that as per the contents of FIR itself, applicant and prosecutrix were in live-in relationship for almost a year and when relationship turn soured and applicant proceeded to marry with some other girl, then this case has been filed as a counter blast to exert pressure. Counsel for the applicant relied upon the judgments rendered by the

Hon'ble Apex Court in the cases of **Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra and others** reported in **AIR 2019 SC, 327** and **Pramod Suryabhan Pawar Vs. State of Maharashtra and others** reported in **AIR 2019 SC 4010** to contend that offence of rape *prima facie* cannot be made out on the basis of promise of marriage and here the parties lived as couple in live-in relationship. Confinement amounts to pretrial detention. He undertakes to cooperate in the investigation/trial and would not be a source of embarrassment and harassment to the complainant party in any manner and shall not move in her vicinity. In the challenging period of Covid-19 Pandemic, prayer for bail has been made.

Learned counsel for the State opposed the prayer and submits that under the bonafide belief of marriage he continued to live in live-in relationship and she has been cheated by the applicant. Therefore, offence *prima facie* is made out.

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

Considering the fact situation of the case and in view of COVID-19 pandemic as well as looking to the mandate of Apex Court in the case of **Aparna Bhat Vs. State of M.P.** reported in

2021 SCC Online 230, but without expressing opinion on merits of the case, I deem it appropriate to allow this application under Section 438 of Cr.P.C. It is hereby directed that in the event of arrest, the applicant shall be released on bail on furnishing a personal bond of **Rs.50,000/-(Rupees Fifty Thousand Only)** with two solvent sureties of the like amount in which one should be local of State of M.P. to the satisfaction of Investigating Officer/Investigating Agency.

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

- 1.The applicant will comply with all the terms and conditions of the bond executed by him;
2. The applicant will cooperate in the investigation/trial, as the case may be;
3. The applicant will not indulge himself in extending inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to the Police Officer, as the case may be;
4. The applicant shall not commit an offence similar to the offence of which he is accused ;
5. Applicant will not seek unnecessary adjournments during

trial and ;

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

7. He shall not move in the vicinity of prosecutrix and shall not be a source of embarrassment and harassment to her in any manner..

8. Applicants shall mark his appearance on every Sunday before the Police Station concerned between 10 am to 2.30 pm. Till filing of charge-sheet.

The Station House Officer of the concerned Police Station is directed as follows:

1. The Station House Officer shall inform the victim about the release of the petitioner/appellant on bail and shall also supply a copy of this bail order to the victim.
2. In case of breach of any of the conditions of this order, the victim shall be free to report the matter to the Station House Officer of the concerned Police Station.
3. On receipt of any such complaint from the victim, the Station House Officer of the concerned police station, in turn, shall inform the Registry of this Court.
4. On receipt of information from the Station House Officer as aforesaid, the Registry of this Court shall list this matter under caption "Directions" before the

appropriate Bench.

संबंधित पुलिस थाने के थाना प्रभारी को निम्नानुसार आदेशित किया जाता है कि :

1. थाना प्रभारी पीड़ित को याचिकाकर्ता/अपीलार्थी के जमानत पर रिहाई के तथ्य को सूचित करेगा तथा जमानत आदेश की एक प्रतिलिपि भी उपलब्ध करायेगा।
2. यदि किसी प्रकार का कोई आदेश में उल्लिखित शर्तों का उल्लंघन होता है तो पीड़ित उक्त तथ्य के संबंध में थाना प्रभारी को सूचित करने के लिए स्वतंत्र रहेगा।
3. यदि किसी प्रकार की ऐसी शिकायत थाना प्रभारी को पीड़ित द्वारा प्राप्त होती है तो वह तुरंत इसकी सूचना इस रजिस्ट्री को उपलब्ध कराएगा।
4. जैसा कि उल्लिखित है, थाना प्रभारी की ऐसी सूचना प्राप्ति के दौरान रजिस्ट्री यह मामला तुरंत माननीय न्यायालय के समक्ष दिशा निर्देश के तहत प्रस्तुत करेगी।

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

Certified copy as per rules/directions.

Ashish*

(Anand Pathak)
Judge