

The High Court Of Madhya Pradesh

CRA-3608-2020

(HARISHCHANDRA Vs THE STATE OF MADHYA PRADESH)

Jabalpur, Dated : 16-10-2020

Heard through Video Conferencing.

Ms. Savita Choudhary, learned counsel for the for the appellant/accused.

Shri Anuj Singh, learned PL for the respondent No.1/State.

None for the respondent no.2/complainant.

Case diary perused.

This is an appeal filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against the impugned order dated 09.06.2020 passed by the Special Judge, S.C./S.T (Prevention of Atrocities) Act, Jabalpur in B.A. No. SCATR/20260/18 whereby the court below has dismissed the application filed by the appellant/accused under Section 439 of Cr.P.C.

The appellant/accused is in custody since 05.09.2018 for the offence under Sections 363, 366, 344, 328, 506, 376(2)(N) and 376(D) of IPC and Sections 3(1)(w)(i) and 3 (2) (v) of SC/ST Act in Crime No.544/2018 registered at Police Station Ghamapur District Jabalpur (M.P.).

As per the prosecution story, a missing report has been lodged by the uncle of the prosecutrix, consequently, the aforesaid offences has been registered against the applicant and other co-accused.

It is submitted by learned counsel for the appellant that the appellant is innocent and he is in custody since 05.09.2018. Trial is still pending. It is further submitted that there is delay in lodging the FIR for which no explanation has been tendered. There is no direct or indirect allegation against the appellant. The applicant is a young youth of 20 years. The prosecutrix also got married with the appellant and for which an affidavit sworn by her has been filed with the bail application. There is no likelihood of his absconding and tempering with the evidence. Hence, the appellant be enlarged

on bail.

On the other hand, learned Panel lawyer has opposed the bail application and prayed for rejection of the appeal on the that it is a matter of gang rape and in her statement recorded under section 164 of Cr.P.C. the prosecutrix has clearly stated against the appellant.

After hearing learned counsel for both the parties and the entire material available in the PDF format and the fact that it is a case of gang rape and delay in lodging the FIR in rape cases is no ground to discard entire prosecution case and it is also not necessary that medically it should be corroborated and looking to the statement of prosecutrix recorded under section 164 of Cr.P.C. and other material available in PDF form and considering the entire material on merit, this Court is of the view that it is not a fit case in which appellant- **Harishchandra** may be released on bail under Section 439 of Cr.P.C. filed under Section 14-A of (POA) Act, hence, the appeal is hereby **dismissed**.

(AKHIL KUMAR SRIVASTAVA)
JUDGE

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