



1

MCRC-36099-2026

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE AJAY KUMAR NIRANKARI

ON THE 17th OF AUGUST, 2026

MISC. CRIMINAL CASE No. 36099 of 2026

GOUTAM KOLARE

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

.....
Appearance:

Ms. Sakshi Bhardwaj - Advocate for the applicant.

Shri Alok Agnihotri - Government Advocate for State.
.....

ORDER

This is first application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 by applicant for grant of regular bail relating to FIR/Crime No.234/2025 registered at Police Station Chandameta, District Chhindwara (M.P.), for the offences punishable under Sections 137(2), 96, 64(2)(m) and 65(1) of BNS, 2023 and Section 3(a)/4 and 5(L)/6 of POCSO Act.

As per the prosecution story, the victim, who is minor girl reported missing on 29.10.2025 and missing report was lodged on 30.10.2025. Thereafter, the victim was recovered on 11.11.2025 from Bhopal with the present applicant. The statement of victim under Section 180 and 183 were recorded, wherein she stated that she left her parental house on her own volition and had been residing with the present applicant where the applicant committed rape with her.



Learned counsel for the applicant submitted that applicant is innocent and has not committed the said alleged offence. She further submits that the applicant and the victim known with each other very well. She also submits that the victim was under her love and affection with the present applicant left her parental house on her own volition. She further submits that the DNA report is negative. She also submits that the victim has examined before the trial Court and the victim has not supported the prosecution story. She further submits that the applicant is in judicial custody since 14.11.2025 and trial will take considerable time to conclude. He also submits that the applicant is permanent resident of District Chhindwara (M.P.) and there is no likelihood of his absconding from clutches of law or temper with prosecution evidence. He further submits that the applicant is ready to furnish adequate surety and shall abide by all the conditions, which may be imposed by this Hon'ble Court. On these grounds, the applicant may be released on bail.

Learned counsel for the respondent/State has opposed the bail application on the ground that though the victim turned hostile before the trial Court but conviction may be awarded on the basis of the medical report. Admittedly, the victim at the time of the incident was below the age of 16 years. Therefore, he prayed for its dismissal.

Heard learned counsel for the parties and perused the case diary.

On perusal of the case diary, it appears that the victim, having the age of 15 years, was reported missing on 29.10.2025 and was subsequently



recovered on 11.11.2025 from Bhopal with the present applicant. The victim, in her statements recorded under Sections 180 and 183 of BNSS alleged that the present applicant forcibly committed rape with her. The allegation was duly proved in the MLC report. Although the DNA report is negative but the MLC report supported the prosecution case. Subsequently, if the victim has not supported the prosecution story and she turned hostile, the Hon'ble Apex Court in the case of **Hemudan Nanbha Gadhvi Vs. State of Gujarat (2019) 17 SCC 523** has held that the conviction can only be done only on the basis of the medical evidence though the victim turned hostile. Paragraphs 9 to 11 of this judgment are relevant, the same are reproduced as under:-

"9. The family of the prosecutrix was poor. She was one of the five siblings. The assault upon her took place while she had taken the buffalos for grazing. Her deposition was recorded nearly six months after the occurrence. We find no infirmity in the reasoning of the High Court that it was sufficient time and opportunity for the accused to win over the prosecutrix and PW1 by a settlement through coercion, intimidation, persuasion and undue influence. The mere fact that PW2 may have turned hostile, is not relevant and does not efface the evidence with regard to the sexual assault upon her and the identification of the appellant as the perpetrator. The observations with regard to hostile witnesses and the duty of the court in *State vs. Sanjeev Nanda, 2012 (8) SCC 450* are also considered relevant in the present context:



“101.....if a witness becomes hostile to subvert the judicial process, the court shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal justice system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation. Further, Section 193 IPC imposes punishment for giving false evidence but is seldom invoked.”

10. A criminal trial is but a quest for truth. The nature of inquiry and evidence required will depend on the facts of each case. The presumption of innocence will have to be balanced with the rights of the victim, and above all the societal interest for preservation of the rule of law. Neither the accused nor the victim can be permitted to subvert a criminal trial by stating falsehood and resort to contrivances, so as to make it the theatre of the absurd. Dispensation of justice in a criminal trial is a serious matter and cannot be allowed to become a mockery by simply allowing prime prosecution witnesses to turn hostile as a ground for acquittal, as observed in *Zahira Habibullah Sheikh vs. State of Gujarat*, (2006) 3 SCC 374 and *Mahila Vinod Kumari vs. State of Madhya Pradesh*, (2008) 8 SCC 34. If the medical evidence had not confirmed sexual assault on the prosecutrix, the T.I.P. and identification therein were doubtful, corroborative evidence was not available, entirely different considerations may have arisen.



11. It would indeed be a travesty of justice in the peculiar facts of the present case if the appellant were to be acquitted merely because the prosecutrix turned hostile and failed to identify the appellant in the dock, in view of the other overwhelming evidence available. In *Iqbal vs. State of U.P.*, 2015 (6) SCC 623, it was observed as follows:

“15. Evidence of identification of the miscreants in the test identification parade is not a substantive evidence. Conviction cannot be based solely on the identity of the dacoits by the witnesses in the test identification parade. The prosecution has to adduce substantive evidence by establishing incriminating evidence connecting the accused with the crime, like recovery of articles which are the subject matter of dacoity and the alleged weapons used in the commission of the offence.”

Considering the aforesaid facts and circumstances of the case, this Court is not inclined to grant the bail to the applicant.

Accordingly, this M.Cr.C. stands **dismissed**.

(AJAY KUMAR NIRANKARI)
JUDGE