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THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.15757/2022
Dilip alias Kalu Pal Vs. State of M.P.

Gwalior, Dated:04/04/2022

Shri Arun Kumar Pateriya, Advocate for applicant.

Shri PPS Vajeeta, Public Prosecutor for respondent/State.

Case diary is available.

This fourth application under Section 439 of Cr.P.C. has been filed for grant of bail. The third application was dismissed by order dated 9/11/2021 passed in M.Cr.C. No.48909/2021.

The applicant has been arrested on 24/3/2021 in connection with Crime No.81/2021 registered at Police Station Girvai, District Gwalior for offence under Sections 376(d), 307/34 of IPC.

It is submitted by the counsel for the applicant that although in the DNA test report, the DNA profile of the applicant has been found in the incriminating articles of the prosecutrix, but it appears that the DNA test report is suspicious. He further submitted that the wife of the applicant has fallen from bike on 21/3/2022 and has sustained injuries. The house of the applicant is in a dilapidated condition and in case if it is not repaired, then it may fall in the rainy season and accordingly, IA No.4994/2022 has been filed for grant of temporary bail for a period of six months.

Per contra, the application is vehemently opposed by the counsel for the State. It is submitted that the presence of DNA profile of the applicant in the incriminating articles of the prosecutrix, who is aged about 60 years clearly indicates that she was subjected to rape by the applicant. Furthermore, his previous applications has already

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been rejected on merits by order dated 9/11/2021 passed in M.Cr.C. No.48909/2021.

So far as the prayer for interim bail is concerned, it was opposed, but the counsel for the State fairly conceded that from the photographs of the house, which have been placed on record, it appears that it is in a dilapidated condition.

Heard learned counsel for the parties.

So far as the merits of the case are concerned, the third application has already been dismissed after considering the fact that the prosecutrix has turned hostile as well as after considering the fact that the DNA profile of the applicant was found on the incriminating articles of the prosecutrix, therefore, prayer for grant of bail is hereby rejected.

So far as IA No.4994/2022 for grant of temporary bail on account of injuries sustained by the wife of the applicant as well as dilapidated condition of the house is concerned, this Court is of the considered opinion that from the photographs of the house, which have been placed on record, it appears that it may not survive the another rainy season. It is true that the rainy season would start from June, 2022, but the repairing work has to be done prior to starting of rainy season. Accordingly, this Court is of the considered opinion that the applicant can be granted temporary bail for getting his house repaired as well as to look after his wife, who has fallen down from a bike on 21/3/2022, which is evident from the OPD prescription

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issued by the Gajraraja Medical College dated 22/3/2022.

Accordingly, it is directed that on furnishing personal bond in the sum of **Rs.1,00,000/- (Rs. One Lac Only)** alongwith one solvent surety in the like amount to the satisfaction of the Trial Court/Committal Court, the applicant shall be released on temporary bail for a period of 45 days from the date of his release.

The applicant shall also furnish an undertaking before the Trial Court that not only he would not interfere in the prosecution evidence, but he would also surrender before the Trial Court on 45th day from the date of his release.

The other conditions of Section 437, 439 Cr.P.C. shall remain the same.

In the light of the judgment passed by the Supreme Court in the case of **Aparna Bhat and others Vs. State of M.P.** Passed on **18.03.2021** in **Criminal Appeal No. 329/2021**, the intimation regarding grant of bail be sent to the complainant.

With aforesaid observations, the prayer for **temporary release is allowed**, but the prayer for grant of **regular bail is rejected**.

(G.S. Ahluwalia)
Judge

Arun*