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**The High Court Of Madhya Pradesh**  
**MCRC No. 39413 of 2021**  
*(MAN SINGH Vs THE STATE OF MADHYA PRADESH)*

**Jabalpur, Dated : 18-01-2022**

**Heard through Video Conferencing.**

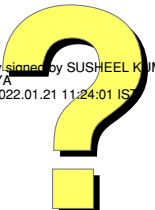
Shri Arpan Shrivastava, learned counsel for the applicant.

Shri K.S. Patel, learned Panel Lawyer for the respondent/State.

This is the second bail application under Section 439 of Cr.P.C filed by the applicant for grant of bail. Earlier bail application of the applicant was dismissed as withdrawn vide order dated 16.03.2020 passed in M.Cr.C. No.6057/2020.

The applicant has been arrested on 07.05.2019 by Police Station Dhuma, District Seoni (M.P.) in connection with Crime No.129/2019 for the offence punishable under Sections 363, 376(2)(J)(I)/366 of IPC.

It is submitted that the applicant has falsely been implicated in the crime and he has not committed any offence in any manner. The applicant is in custody since 07.05.2019. There is no direct evidence against the present applicant. It is submitted that prosecution has levelled allegation of committing rape with the victim, but the fact remains that there is no definite medical opinion regarding commission of offence. The victim is major aged about 24 years. She is mentally retarded. The MLC clearly shows that the hymen was old torn and healed. The medical examination of the victim was done on the very next day. The report has been lodged by the *Bhabhi* of the victim, who has raised suspicion regarding commission of rape with the victim, owing to the fact that she found some blood on the private parts of the victim, but the opinion given by the doctor clearly says that the blood was found owing to the fact it was the last day of her menstruation cycle. It is argued that he was taken into custody on 07.05.2019 and the samples were collected on 06.05.2019 and were sent for FSL/DNA examination on 10.05.2019, but till date no report is received. Material witnesses have already been examined before the trial Court. The victim's statement could not be



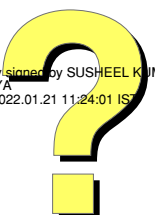
recorded, owing to the fact that she is not in a position to speak as she is mentally retarded. The documents i.e. the medical report as well as the statement of the doctor clearly reflect that she is not responding to the questions asked to her. The applicant is the first offender and looking to the custody period of applicant, he prays for grant of bail.

Per contra, counsel appearing for the State has vehemently opposed the prayer stating that there is sufficient evidence available against the present applicant. The applicant is stated to have committed rape with a mentally retarded girl aged about 24 years. She is unable to speak or communicate and taking advantage to her mental condition, he has committed rape. Statement of the Sunnabai was recorded on 11.02.2020, thereafter, statement of other witness i.e. a minor who was asked to call the victim, has also been recorded and they have supported the prosecution story. It is argued that the trial is at the fag end as all the material witnesses have already been examined.

A specific question was put to the counsel for the State that whether the order passed by this Court on 05.01.2022 is complied with or not, he submits that the DNA is not received till date. As per the information given to him by the SHO, a special messenger has been sent to collect the DNA report. He is again asked that where is the Station House Officer as he was directed to remain present in absence of the DNA report, he submits that he has informed the Station House Officer and also sent the connecting link to join the proceedings.

When the matter was taken up in the first round, counsel for the State has prayed for passover to enable him to again inform the SHO to connect through Video Conferencing and when the matter was taken up in the second round i.e. passover round, again the SHO is not connected through Video Conferencing. He submits that he has made all possible efforts to connect the SHO and also tried to contact him on telephone, but his telephone is also not reachable now. It is submitted he must be busy in some proceedings.

A specific question was also put to the state counsel that when the



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samples were collected on 06.05.2019 and sent for examination on 10.05.2019 what proceedings have been taken up by the Forensic Lab authorities for examination of the sample, is there any communication in the case diary with respect to the same and what efforts are taken by the police authorities to collect the sample till date, he fairly submits that the correspondence has been made after direction of this Court for calling of the DNA report, prior to that there was no correspondence. He is further directed to explain that how much time the sample survives for examination and how much time it takes to get the report done once the sample is taken up for examination. he has shown his inability to explain the same and submits that the same can only be explained by the experts i.e. officers of the Forensic Lab.

Looking to the facts and circumstances of the case, as SHO despite the specific direction by this Court is not cooperating and has not even connected through Video Conferencing and also not picking up telephone call made by the state counsel, it appears that he is deliberately not connecting through Video Conferencing and taking advantages of the virtual modes, is not complying with the orders passed by this Court. In such circumstances, this Court deems it appropriate to direct the Superintendent of Police, Seoni to look into the matter. The Superintendent of Police is directed to file an affidavit to the effect that to explain why so much time is being taken for getting the sample examined and in getting the report of DNA, as the samples were collected on 06.05.2019 and were sent for examination on 10.05.2019. He is further directed to explain on affidavit the entire procedure which has been taken up by the authorities immediately on receipt of the samples for examination. He is further directed to point out that as to how much time, it takes to procure the report once the sample is taken up for examination. It is seen that in large numbers of cases, FSL reports and DNA reports are not being produced before this Court or before the trial Court despite the fact that the charge-sheets have already been filed and in the trial, the statements of



the material witnesses have already been recorded. This goes to show apathetic state of affairs of the state authorities in not getting the sample examined at an early date. Several directions have already been issued by this Court regarding formation of additional Forensic Lab for examination of the samples. What steps have been taken by the authorities in pursuance to the directions issued by this Court on earlier occasions.

Let the aforesaid affidavit be filed positively within 15 days from the date of receipt of a certified copy of this order.

As far as present application for grant of bail is concerned, looking to the overall facts and circumstances of the case and as well as the fact that it is an offence has been committed against a victim who is mentally retarded and taking advantage of her mental condition, the applicant stated to have committed rape with her, which is duly supported by the statements of the witnesses, this Court does not deem it appropriate to allow this application. The application is hereby **rejected**.

List under the head 'Direction' in the **second week of Feb., 2022**.

(VISHAL MISHRA)  
JUDGE

sj

