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**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE  
HON'BLE SHRI JUSTICE VISHAL DHAGAT  
WRIT PETITION No. 3535 of 2023**

**BETWEEN:-**

**MOHD. FAHEEM KHAN**

**.....PETITIONER**

*(BY MS. SAKSHI BHARDWAJ - ADVOCATE)*

**AND**

1. THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY OF HOME DEPARTMENT VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)
2. SUPERINTENDENT OF POLICE JABALPUR DISTRICT JABALPUR (MADHYA PRADESH)
3. STATION HOUSE OFFICER P.S. GARHA DISTRICT JABALPUR (MADHYA PRADESH)
4. VICTIM X (MADHYA PRADESH)

**.....RESPONDENTS**

*(BY SHRI SANDEEP KUMAR SEN - ADVOCATE FOR RESPONDENT NO.4  
AND MS. SWETA YADAV - GOVERNMENT ADVOCATE)*

.....  
*Reserved on : 12.05.2023*

*Delivered on : 15.06.2023*

*This case having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:*

**ORDER**

Petitioner has filed this petition under Article 226 of the Constitution of India making a prayer for quashing of FIR dated 06.10.2022 registered under

Section 376(2)(N), 506, 294, 323 of the IPC in connection with Crime No.676/2022 at Police Station-Gadha, District-Jabalpur (MP).

2. Learned counsel appearing for petitioner submitted that there is delay in lodging of FIR. Incident is said to have taken place since last four years and FIR has been lodged on 06.10.2022. It is alleged that respondent No.4 is habitual blackmailer. Earlier FIR were registered in connection with Crime No.461/2013 at Police Station-Kotwali, Jabalpur against one Sandeep Dubey and in Connection with Crime No.528/2019 at Police Station-Adhartal, Jabalpur against on Amit Joshi. Learned counsel appearing for petitioner relied upon judgment passed by Apex Court in case of *Manoranjan Goshwami Vs. State of Maharashtra* reported in (2020) SCC online SC 964. On said grounds, counsel for petitioner prays for quashing of FIR.

3. Private respondents No.1 and 2 had filed reply and stated therein that written complaint was received on 06.10.2022. Essential ingredients of offence under Section 376 of the IPC was found in complaint. Statement of prosecutrix was recorded under Section 164 of the Cr.P.C. and investigation was conducted and statement of as many as 18 witnesses were recorded. In these circumstances, offence is made out against petitioner. Petitioner is unable to carve out his case within the guidelines laid down by the Apex Court in case of *State of Haryana and Others Vs. Bhajanlal and Others* reported in AIR 1992 SC 604. In these circumstances, petition deserves to be dismissed.

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

5. Police Station-Gadha has registered offence under Sections 376(2)(N), 506, 294, 323 of the IPC and Sections 3, 5 of the MP Dharmik Swatantrata Adhiniyam, 2021 against petitioner. As per prosecution story, prosecutrix lodged a written complaint at police station-Gadha against petitioner. She has

stated that she runs a beauty parlor. She is known to petitioner since last four years. He called her for doing friendship and took her to a rented house in Maheshpur and forcibly committed rape. He had establish physical relationship with her for last four year. She was threatened that if she will not establish physical relationship with him then he will kill her. She was so harassed by petitioner that she consumed Harpic. She also requested for taking action against petitioner/accused. Similar statement was given by her in her statement recorded under Section 164 of the Cr.P.C. She had stated that she got pregnant twice in love relationship with Faheem. Faheem got her aborted twice. When she asked him to marry he used to tell that he will talk to his family members and when she again requested him to marry her he started beating her. It is submitted that during one such assault he broke her leg.

6. On perusal of FIR, written complaint and statement of prosecutrix recorded under Section 164 of the Cr.P.C., it appears that petitioner was known to prosecutrix for last four years and they were having physical relationship with each other. It has not been stated in written complaint that petitioner promised to marry her and thereafter he committed sexual intercourse with her. It was also not stated that he gave promise to marry the prosecutrix and thereafter established physical relationship with her. It was only stated that he took her to a house to talk to her regarding their friendship and has raped her. No complaint was made at that time and thereafter many times both of them established physical relationship. It has not been stated that during these time any promise of marriage was given to prosecutrix. Later on, it was stated that she will be killed by petitioner if she refuses to establish relationship. She further improves her version in statement given in Court under Section 164 of the Cr.P.C. that

petitioner made promise to marry the prosecutrix. Prosecutrix has also lodged FIR against other persons but later on she turned hostile in Court and they had been acquitted. Allegation of *malafide* and blackmailing was also made in the writ petition.

7. Paragraph No.-108 of the case *State of Haryana (supra)* is quoted as under:-

*"108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

*1. where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

*2. where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers*

*under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

*3. where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

*4. where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

*5. where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

*6. where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

*7. where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

8. From aforesaid facts, it is apparent that case of petitioner will be

covered under Clause 7 of case of *State of Haryana (supra)*. There is delay in lodging of FIR. There was long standing relationship between prosecutrix and petitioner. There is no allegation that there was false promise to marry. There is also FIR against other men by prosecutrix which shows that FIR has been lodged *malafidely* due to break in their relationship or for some other ulterior motives.

9. In view of aforesaid facts and circumstances of the case, FIR dated 06.10.2022 registered against petitioner in connection with Crime No.676/2022 at Police Station-Garha, District-Jabalpur (MP) is quashed. Writ petition is *allowed*.

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(VISHAL DHAGAT)  
JUDGE