

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2020

(Against the final judgment and order dated 30.07.2020 passed by the Hon'ble
Madhya Pradesh High Court at Indore in MCRC No. 23350/2020)

POSITION OF THE PARTIES

BETWEEN

**Trial
Court**

**Hon'ble
High
Court**

**Hon'ble
Supreme
Court**

1. Aparna Bhat

Occupation: Advocate

2. G.S. Veena

3. Kanaka Latha Olavatth

4. Susan Verita D'Silva

5. Lakshmi N.B.

6. Lalita Sivaraman Iyer

7. Rama Ramachandra Iyer

8. Susmita Durg

9. Meenakshi K.C.**VERSUS****1. State of Madhya Pradesh**
Through(SHO)

Station House Officer,
P.S. Bhatpachlana, Ujjain,
Madhya Pradesh

Not
Applicable

Respondent
No. 1

Respondent
No. 1

2. Vikram

Through Bherulal Bagari
Labour Village Sandla,
Tehsil Khachrod, Ujjain,
Madhya Pradesh.

Not
Applicable

Petitioner

Respondent
No. 2

Respondent No.1 and 2 are contesting

PETITION UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS LORDSHIP'S COMPANION JUSTICES OF THE

HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION
OF THE ABOVE NAMED
PETITIONERS

MOST RESPECTFULLY SHOWETH:

1. That the present Special Leave Petition has been filed under Article 136 of the Constitution of India praying for Special Leave to Appeal against the final judgment and order dated 30.07.2020 passed by the Madhya Pradesh High Court at Indore in MCRC No. 23350/2020 whereby, the application for bail was allowed and the Respondent No. 2 herein was granted bail subject to certain conditions.

2. QUESTIONS OF LAW:

That the substantial questions of law which arise for consideration of this Hon'ble Court are as follows:

- I. Whether in a case seeking bail, it is appropriate for a court to impose extraneous conditions which allows contact between the accused and the complainant?
- II. Whether the bail condition which is impugned herein stands to further victimize the Complainant and trivialize the trauma that she has suffered?

- III. Whether the abovementioned bail condition is in line with the principles that govern trials within the criminal justice system?
- IV. Whether the Hon'ble High Court ought to have employed circumspection and sensitivity while dealing with a case involving a sexual offence having been committed against a woman?

3. DECLARATION IN TERMS OF RULE 4(2):

The Petitioners state that no other petition seeking leave to appeal has been filed by them against the impugned judgment and order dated 30.07.2020 passed by the Hon'ble Madhya Pradesh High Court at Indore in MCRC No. 23350/2020.

4. DECLARATION IN TERMS OF RULE 6:

The NOT ANNEXURE produced along with the Special Leave Petition are true copies of pleadings/documents which form part of the records of the case in the High Court against whose judgment and order Special Leave to Appeal is sought for in this Petition.

5. GROUND:

That the Petitioners are filing the instant Special Leave Petition on the following amongst other grounds:

- A. Because the Hon'ble High Court erred in imposing a condition that defeated the very purpose of granting bail by directing the alleged perpetrator to establish contact with the victim;
- B. Because the Hon'ble High Court failed to appreciate that in most cases of sexual violence, the prosecutrix turns hostile and in many of these cases it is because she gets intimidated and/or induced by the family of the accused;
- C. Because the Hon'ble High Court by imposing the impugned condition completely negated the very basis of the prosecution case which included wrongful entry to the property of the victim;
- D. Because in the case of ***State of M.P. v. Madanlal*** (2015) 7 SCC 681, this Hon'ble Court has firmly deprecated any compromise in cases of sexual offences. The relevant portion of the judgment is quoted hereunder:

“18. ... We would like to clearly state that in a case of rape or attempt to rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are the offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the “purest treasure”, is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is

sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error.”

E. That the Petitioners herein are public spirited persons concerned about the precedent set by the imposition of the aforementioned condition while granting bail in a case involving a sexual offence having been committed against a woman;

F. That the Hon'ble High Court fell into grave error and exceeded the mandate of law by imposing the following condition while granting bail to Respondent No. 2 herein:

“(i) the applicant along with his wife shall visit the house of the complainant with Rakhi thread / band on 03rd August, 2020 at 11:00 am with a box of sweets and request the complainant-Sarda Bai to tie the Rakhi band to him with the promise to protect her to the best of his ability for all times to come. He shall also tender Rs. 11,000/- (Rs. Eleven Thousand Only) to the complainant as a customary ritual usually offered by the brothers to sisters on such occasion and shall also seek her blessings. The applicant shall also tender Rs. 5,000/- to the son of the complainant-Vishal for purchase of clothes and sweets.”

- G. That the Hon'ble High Court ought to have been cognizant and sensitive to the fact that in a case involving a sexual offence having been committed against a woman, it is immeasurably difficult for the survivor to lodge an FIR and pursue a criminal case against the accused at the threshold. This is for the reason that society and the criminal justice system are not particularly conducive to the plight faced by survivors of sexual offences. It is well documented that cases of sexual violence are generally under reported and research has shown that women and families do not seek redressal from the criminal justice system primarily to avoid the secondary trauma that they are subjected to in the process of a criminal trial.
- H. That imposing a condition whereby the accused i.e. Respondent No. 2 be required to go to the house of the Complainant on the festival of Rakshabandhan and request her to tie a rakhi around his wrist with the "promise to protect her to the best of his ability for all times to come" results in further victimization of the survivor in her own house. In the context of Rakshabandhan being a festival of guardianship between brothers and sisters, the said bail condition amounts to gross trivialization of the trauma suffered by the Complainant in the present case. It is also important to note at this juncture that the alleged incident is said to have been committed by Respondent No. 2 by forcibly entering the Complainant's house.

- I. That while it is routine for Courts to award certain compensation to survivors of sexual offences to be paid by the accused, it is highly objectionable for the Hon'ble High Court in the present case to put the Complainant in a position where she is forced to accept the sum of Rs. 11,000 as part of the customary ritual of Rakhshabandhan. Moreover, the said bail condition also goes a step further by stating that Respondent No. 2 tender Rs. 5,000 to the son the Complainant.
- J. That the present case is of particular concern since it has taken years to undo the damaging approach followed by Courts whereby cases involving sexual offences committed against women are attempted to be compromised by way of marriage or mediation between the accused and the survivor.

6. GROUND FOR INTERIM RELIEF:

The Petitioners seeks interim relief from this Hon'ble Court on the following amongst other grounds:

- A. That the Petitioners have a good case on merits and are likely to succeed before this Hon'ble Court.
- B. That considering the merits of the case, allowing the said bail condition to stand in the interim will be a grave miscarriage of justice.

7. MAIN PRAYER:

In the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- A. Grant Special Leave to Appeal against the final judgment and order dated 30.07.2020 passed by the Hon'ble Madhya Pradesh High Court at Indore in MCRC No. 23350/2020;
- B. Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

8. PRAYER FOR INTERIM RELIEF:

In the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- A. Stay the following bail condition imposed by the final judgment and order dated 30.07.2020 passed by the Hon'ble Madhya Pradesh High Court at Indore in MCRC No. 23350/2020:

“(i) the applicant along with his wife shall visit the house of the complainant with Rakhi thread / band on 03rd August, 2020 at 11:00 am with a box of sweets and request the complainant-Sarda Bai to tie the Rakhi band to him with the promise to protect her to the best of his ability for all times to come. He shall also tender Rs. 11,000/- (Rs. Eleven Thousand Only) to the complainant as a customary ritual usually offered by the brothers to sisters on such occasion and shall also seek her blessings. The applicant shall also tender Rs. 5,000/- to the son of the complainant-Vishal for purchase of clothes and sweets.”

B. Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS, THE PETITIONER / APPLICANT
AS IN DUTY BOUND SHALL EVER PRAY.**

Filed by:

PUKHRAMBAM RAMESH KUMAR

Advocate-on-Record for the Petitioners

Place: New Delhi

Drawn on: 19.09.2020

Filed on: 20.09.202