

ABC 2025 (II) 883 MP

ACQUITTAL & BAIL CASES

HIGH COURT OF MADHYA PRADESH

(Shri Milind Ramesh Phadke, J.)

Misc. Criminal Case No. 42422 of 2025

Decided On 22 September 2025

KAMAL KISHORE KUSHWAHA @ KALLA @ RADHE - Appellant(s).

Versus

STATE OF MADHYA PRADESH & OTHERS - Respondent(s).

Law Covered:- (A) Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 483 (Code of Criminal Procedure, 1973 - Section 439) - Bail - Grant of - Consideration of Hostile Witness, Prolonged Detention & First-Time Offender Status - FIR registered for offences u/ss 363, 366, 376, 376(3) IPC (BNS - Ss. 137(2), 87, 64, 65(1)) & u/ss 3/4 POCSO Act - Allegation of rape upon prosecutrix - During trial, prosecutrix turned hostile and did not support prosecution case - Accused is a first-time offender with no criminal antecedents - Trial not likely to conclude soon - Prolonged pre-trial detention anathema to liberty - Bail granted subject to conditions - IPC - 363, 366, 376, 376(3) (BNS - Ss. 137(2), 87, 64, 65(1)) - POCSO Act - S. 3&4. (Paras 1-3)

Facts:- The petitioner filed a first bail application u/s 483 BNS (S. 439 CrPC) after being arrested in a crime registered u/ss 363, 366, 376, 376(3) IPC (BNS - Ss. 139, 141, 73, 73(3)) and u/ss 3/4 of the POCSO Act. The prosecution alleged the petitioner committed rape on a 19-year-old victim. The defence contended false implication, highlighting that the prosecutrix left her home voluntarily and later turned hostile during her court testimony, not supporting the prosecution's case. It was further submitted that the petitioner was a first-time offender, a permanent resident with no risk of absconding or tampering with evidence, and that the trial would take considerable time. The State opposed the bail. The High Court, considering the prosecutrix's hostile testimony, the petitioner's clean record, the unlikelihood of an imminent trial conclusion, and the principle that prolonged pre-trial detention is contrary to liberty, granted bail without commenting on the merits.

Law of relief:- Consideration of Hostile Witness is a relevant fact to be considered during bail.

Counsel:-

For Applicant: Shri Arjun Singh Kushwah, Adv.

For Respondents: Shri V P S Tomar P L appearing on behalf of Advocate General for the State, Adv.

ORDER

Milind Ramesh Phadke, J.: -

This is first bail application under Section 483 of BNSS filed by the applicant for grant of bail.

The applicant has been arrested on 31.7.2025 by Police Station-Cantt. District Guna in connection with Crime No.3/2024, registered in relation to the offence punishable under Sections 363, 366, 376, 376 (3) of IPC and section 3/4 of POCSO Act.

As per the case of the prosecution, the allegation against the present applicant is that he committed rape upon the prosecutrix, who is aged 19 years. On the basis of such allegation, the above crime was registered.

Learned counsel for the applicant submits that the applicant has been falsely implicated in the case. He has not committed any offence. The prosecutrix had left her house to her own will. He further submitted that the prosecutrix has been examined during trial and in her Court statement, she has turned hostile and had not supported the case of the prosecution. The applicant is the first offender and he has no criminal past. Trial will take time for its conclusion. The applicant is permanent resident of District Guna and there is no likelihood of his absconsion or tampering with the prosecution evidence. He is ready to abide by the terms and conditions as may be imposed. With the aforesaid submissions, prayer for grant of bail is made out.

Learned counsel for the State vehemently opposed the application and prayed for its rejection.

Considering the overall facts and circumstances of the case, nature of allegations and looking to the Court statement of the prosecutrix as she turned hostile and not supported the case of the prosecution, coupled with the fact that the trial is not likely to conclude in near future and prolonged pre-trial detention being an anathema to the concept of liberty, this Court is inclined to extend the benefit of bail to the applicant.

Accordingly, without expressing any opinion on merits of the case, this application is allowed and it is directed that the applicant be released on bail on furnishing a personal bond in the sum of

a **Rs.50,000/- (Rupees Fifty Thousand only)** with one solvent surety of the like amount to the satisfaction of the trial Court/committal Court for his appearance on the dates given by the concerned Court.

This order will remain operative subject to compliance of the following conditions by the applicant:-

b 1. The applicant will comply with all the terms and conditions of the bond executed by him;

2. The applicant will cooperate in the investigation/trial, as the case may be;

c 3. The applicant will not indulge himself in extending inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Police Officer, as the case may be;

d 4. The applicant shall not commit any other offence during pendency of the trial, failing which this bail order shall stand cancelled automatically, without further reference to the Bench;

5. The applicant will not seek unnecessary adjournments during the trial; and

e 6. The applicant will not leave India without previous permission of the trial Court/Investigating Officer, as the case maybe.

Result:- Bail granted. Application allowed.

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