

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

**BEFORE**

**HON'BLE SHRI JUSTICE PRANAY VERMA**

**ON THE 6<sup>th</sup> OF DECEMBER, 2022**

**MISC. CRIMINAL CASE No. 39905 of 2022**

**BETWEEN:-**

**NIZAM @ NIZAMUDDIN S/O SHRI IKRAMUDDIN, AGED  
ABOUT 28 YEARS, OCCUPATION: LABOUR 32 NALCHA  
DARVAZA DHAR (MADHYA PRADESH)**

**.....APPLICANT**

***(BY SHRI ABHINAV DHANODKAR, ADVOCATE)***

**AND**

- 1. THE STATE OF MADHYA PRADESH STATION  
HOUSE OFFICER THROUGH POLICE STATION  
CHANDAN NAGAR (MADHYA PRADESH)**
- 2. VICTIM X THROUGH POLICE STATION CHANDAN  
NAGAR, DISTRICT INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI HITENDRA TRIPATHI, GOVT. ADVOCATE  
BY SHRI NADEEM KHAN, ADVOCATE FOR OBJECTOR)***

*.....*  
*This application coming on for admission this day, the court passed the  
following:*

**ORDER**

01. This is the first application under Section 439 of Criminal Procedure Code, 1973. The applicant is implicated in connection with Crime No.207/2022 registered at Police Station Chandan Nagar, District Indore (MP) for offence punishable under Sections 363, 366, 376(2) (n) of the IPC & Section 3/4 of the Protection of Children from Sexual Offences Act, 2012. The applicant is in custody since 04.05.2022.

02. As per the prosecution, on 04.03.2022 a complaint was lodged by the father of the prosecutrix to the effect that the prosecutrix, a minor, is missing and cannot be traced out despite best efforts and has probably been abducted by the present applicant. On the complaint search for the prosecutrix was made and she was eventually recovered from the custody of the applicant on 03.05.2022 and upon recording of her statement to the effect that she had gone alongwith the applicant who has committed rape upon her, the applicant has been implicated and arrested for the present offence.

03. Learned counsel for the applicant submits that the applicant is innocent and has falsely been implicated in the case. Though the age of the prosecutrix is alleged to be 14 years as per the scholar register but her parents at the time of lodging of the FIR and in their statements stated her age to be 17 years. Even in the scholar register the name of the mother of the prosecutrix has been incorrectly mentioned which itself casts a doubt upon the same. As per the marksheet of the prosecutrix she was 17 years at the time of the alleged incident. In her statement under Section 164 of Cr.P.C. the prosecutrix has stated to have known the applicant for quite sometime and having been talking to him and having on her own gone along with him to various places and eventually to Delhi where she got married to him and stayed with him as his wife and developed physical relationship with him willingly. It is also submitted that the prosecutrix has been examined before the trial Court and she has categorically stated that she has been married to the applicant and has signed upon the Nikahnama. She has not stated that the applicant exercised any force upon her for the same. Investigation has been completed and charge sheet has been filed and the applicant is in custody since 04.05.2022 and the trial is still likely to take time for its conclusion. On such grounds prayer for grant of bail

to the applicant is made out.

04. The aforesaid prayer has been opposed by the learned counsel for the respondent/State as well as learned counsel for the objector/father of the prosecutrix submitting that in view of the allegations levelled against the applicant, he is not entitled to be released on bail.

05. I have heard learned counsel for the parties and have perused the case diary as well as statement of prosecutrix recorded before the trial Court.

06. The prosecutrix is alleged to be a minor and her parents at the time of lodging of the FIR and in 164 Cr.P.C. statements have stated that the age of the prosecutrix is 17 years on the basis of her marksheet. Though in the scholar register her date of birth has been mentioned as 15.04.2008 but the name of the mother of the prosecutrix has been incorrectly recorded therein. The same thus makes it doubtful. In her statement under Section 164 of Cr.P.C. the prosecutrix stated to have on her own gone along with the applicant to different places and eventually to Delhi and having married him and having lived with him as his wife and having developed physical relationship with him willingly. She did not state that the applicant exercised any force upon her for the same. The said statement has been corroborated in her statement before the Court in which she has affirmed her marriage with the applicant. Investigation has been completed and charge sheet has been filed and the applicant is in custody since 04.05.2022 and the trial is still likely to take time for its conclusion. Thus in my opinion the applicant deserves to be released on bail, hence, the application is allowed.

07. It is directed that the applicant be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only)

with one solvent surety in the like amount to the satisfaction of the trial Court for securing his presence before the said Court on all the dates of hearing fixed in this regard during trial. It is also directed that the applicant shall comply with the provisions of Section 437(3) Cr.P.C.

08. This order shall remain effective till the end of the trial but in case of bail jump and breach of any of the pre-conditions of bail, it shall become ineffective and cancelled without reference to this Bench.

Certified copy as per rules.

jyoti



**(PRANAY VERMA)**  
**JUDGE**