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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 4th OF AUGUST, 2022

MISCELLANEOUS CRIMINAL CASE No. 34551 of 2022

Between:-

**NARESH RAJORIYA S/O SHRI SURESH
RAJORIYA, AGED ABOUT 31 YEARS,
OCCUPATION - CANTEEN ATTENDANT R/O
VILLAGE MANGROL, TEHSIL BARELI,
DISTRICT RAISEN (M.P.)**

.....APPLICANT

(BY SHRI ANKIT SAXENA - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH THROUGH
POLICE STATION MAHILA THANA DISTRICT
BHOPAL (M.P.)**

.....RESPONDENTS

**(SHRI ADITYA NARAYAN GUPTA - GOVERNMENT ADVOCATE
SHRI RAJKUMAR RAGHUWANSHI - ADVOCATE FOR THE
OBJECTOR)**

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

ORDER

This first bail application is filed under Section 439 of the Code of Criminal Procedure, 1973 on behalf of the applicant-**Naresh Rajoriya** S/o Suresh Rajoriya, who is in custody since 29.06.2022 in connection with Crime No.84/2022 registered at Police Station Mahila Thana, District Bhopal (M.P.) for the offence punishable under Sections 376, 506 of IPC.

Earlier bail application under Section 438 of Cr.P.C. was dismissed as withdrawn vide order dated 17.05.2022 in M.Cr.C. No.23195/2022.

It is submitted that though on the basis of information available on the website of the High Court, M.Cr.C. No.26587/2022 is mentioned but said application was never filed by the present applicant. It is also submitted that there is only one accused in the present crime.

Shri Ankit Saxena, learned counsel for the applicant submits that incident took place on 03.12.2020 then on 18.03.2022 prosecutrix pressurized the present applicant for marriage and, thereafter, on 12.04.2022, FIR was lodged. Applicant is a differently abled person working as Canteen Attendant in Ministry of Defence. The prosecutrix was a consenting party and allegation is only in regard to false promise of marriage. There is stay in hotel on seven occasions between 2020 and 2021. The prosecutrix herself has refused to marry initially and later sent a message that the applicant can marry any other girl. It is submitted that there is a difference of age of 5 years between the complainant and the applicant i.e. complainant is 5 years elder to the applicant in age and they both belong to different caste. Charge-sheet has been filed.

Reliance is placed on the judgment of Supreme Court in cases of **Deepak Gulati Vs. State of Haryana (2013) 7 SCC 675**, **Dr. Dhruvram Murlidhar Sonar vs The State Of Maharashtra and others, AIR 2019 SC 327**, **Maheshwar Tigga Vs. State of Jharkhand, (2020) 10 SCC 108**, **Pramod Suryabhan Pawar Vs. State of Maharashtra, (2019) 9 SCC 608**, **Sonu Vs State of Uttar Pradesh, 2021 SCC Online SC 181**, to buttress his claim that when there is a case of consensual relationship then mere denial of marriage cannot be a ground to institute prosecution under Sections 376, 506 of IPC. Hence, prayer is made to enlarge the applicant on bail.

Shri Aditya Narayan Gupta, learned Government Advocate for the respondent-State and Shri Rajkumar Raghuwanshi, learned counsel for the

objector submit that on the last date, applicant had sought time to seek instructions because it was informed that applicant is willing to marry but because of family pressure, he has to wriggle out. It is also submitted that it is not a case of simplicitor consensual pre-marital sex. Both the applicant and the complainant are handicapped. They knew each other. Applicant approached the complainant with a promise of marriage and enticed her in physical relationship. Later on, he refused to marry as soon as applicant could get a job with the defence establishment as his expectations were on wings.

Today, Shri Ankit Saxena submits that though sister of the applicant is willing for performance of marriage of the applicant with the complainant but since father of the applicant has refused because of age difference and caste difference, marriage is not possible.

After hearing learned counsel for the parties and going through the record, it is evident that applicant always had knowledge about the age difference between him and the complainant. There was also conscious knowledge of difference in the caste. The only uniting factor was emotional bonding on account of both being differently abled and there was a promise on part of the applicant but later on as soon as he could get a job, he has changed his attitude. In any case, apart from these facts what is glaring or staring at this Court is that in the 21st century, still in the name of caste and creed, social differentiation is being created. It is not a case of suppression of caste of the prosecutrix, which was discovered later on.

In any case, prosecutrix has not been examined in the Court of law. She is a vulnerable witness. If applicant is enlarged on bail then there is possibility of witness being tampered with. Therefore, having due respect to the judgments

cited by Shri Ankit Saxena, I am of the opinion that to secure the interest of justice so also interest of a vulnerable witness, this is not the correct stage to extend benefit of bail to the applicant.

Accordingly, this bail application fails and is dismissed.

(VIVEK AGARWAL)
JUDGE

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