

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
(SINGLE BENCH: HON'BLE Mr. JUSTICE VIVEK RUSIA)

M.Cr.C. No. 44184 of 2020

(Mukesh S/o. Mr Lakshman @ Lakshminarayan. V/s. The state of M.P.)

Date: 31.12.2020 :

Applicant by Shri Rishiraj Trivedi, Advocate.

Respondent/State by Shri Sudhanshu Vyas, Panel Advocate.

O R D E R

This is the first application filed under Section 439 of Cr.P.C. by the applicant – Mukesh S/o. Lakshman @ Laxminarayan, who has been arrested by Police on 16.9.2020 in connection with Crime No.195/2018, Police Station Jaora City, District Ratlam for the offence punishable under Section 420, 467 and 468/34 of the IPC.

As per prosecution story, the complainant – Jitendra submitted a written complaint in Police Station Jaora City on 16.9.2020 against the present applicant Gayatribai, Nageshwar, and Omprakash @ Prakash alleging that with the common intention they performed his marriage with Gayatribai in Jaora Court on 9.9.2020 but after 5-6 days of the marriage, Gayatribai fled away from his house with all her belongings. He gave Rs.1,50,000/- to the present applicant for this marriage. He inquired about Gayatribai from the applicant but he threatened him for his false implication in the rape case. Accordingly, the police have registered the case against the present applicant under the aforesaid offences. During the investigation, the police have recovered the stamp papers and arrested the present applicant, Gayatribai, Nageshwar and Omprakash and recorded their statements u/s. 27 of the Evidence Act. According to them, they have distributed the amount of Rs.1,50,000/- amongst themselves.

Learned counsel for the applicant submits that the applicant has been falsely implicated in the case. The applicant is in custody since 16.9.2020 and the trial may take time to conclude. He has only introduced Gayatribai to the complainant for marriage and thereafter, he does not know whereabout of Gayatribai. He is also not aware of the past antecedents of Gayatribai, hence he is entitled to bail.

Learned Panel Advocate appearing for the respondent/State opposes the prayer by submitting that the applicant took Rs.1,50,000/- from the complainant and got performed the marriage of Gayatribai with the complainant through Notary who is not authorised to perform the marriage. The applicant has signed on the marriage agreement as a witness, therefore, he is not entitled to bail.

I have perused the case-diary. The complainant met with Nageshwar for his marriage. Thereafter he got introduced Gayatribai and Omprakash with Nageshwar and performed their marriage on 9.9.2020. Gayatribai is missing since 14.9.2020 from the house of the complainant and she has also threatened the complainant for his false implication in the rape case.

Not only the accused persons who have conspired in performing the forged marriage of the complainant, but the Notary who executed the marriage agreement is also equally responsible in this case. The job of the Notary is defined under the Notary Act. He is not supposed to perform the marriage by executing documents. Had he properly guided and refused to execute the marriage agreement to the complainant, then the present offence would not have been committed. This Court is repeatedly receiving the cases of forged marriage performed by the Notary, therefore, the Law Department of the State is required to look into these matters as to how the Notaries and Oath Commissioners are involving themselves in executing the document in respect of the marriage, divorce, etc, which are not permissible under the law. Neither the Notary is

authorised to perform the marriage nor competent to execute the divorce deed. Therefore, strict guidelines are required to be issued to the Notaries and oath commissioners for not executing such type of deed, failing which their licence would be terminated. Let a copy of this order be sent to the Principal Secretary, Law Department of State of M.P. For taking action in the matter.

However, without commenting anything on the merits of the case, subject to deposit of Rs.50,000/- (Fifty Thousand) by the applicant in the trial Court, he shall be enlarged on bail and upon his furnishing, a personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand) with one surety in the like amount to the satisfaction of the trial Court for his appearance before the trial Court on all such dates as may be fixed in this behalf by the trial Court during the pendency of trial and shall also abide by the conditions enumerated under section 437(3) Cr.P.C. The amount of Rs. 50,000/- so deposited by the applicant be kept in the FDR in any nationalised bank fetching maximum rate of interest and the same shall be disbursed after the conclusion of the trial.

Before releasing the applicant from the custody the jail authorities are directed to medically examine him in order to rule out the possibility of COVID -19 infections and shall comply with the direction given by the Hon'ble Apex Court in Writ Petition No. 1/2020.

C.C. as per rules.

(VIVEK RUSIA)

V. JUDGE

Alok/-