

1
THE HIGH COURT OF MADHYA PRADESH
MCRC-50562-2021
Ajay Jatav Vs. State of MP and anr.

Gwalior, Dated: 21-10-2021

Shri Awdhesh Sharma, Counsel for the applicant.

Shri BPS Chauhan, Counsel for the State.

Case diary is available.

This fifth application under Section 439 of Cr.P.C. has been filed for grant of bail. Fourth application was dismissed on merits by order dated 31.07.2021 passed in M.Cr.C. No. 37188/2021.

The applicant has been arrested on 31.01.2021 in connection with Crime No.240/2019 registered at Police Station Rannod Distt. Shivpuri for offence under Sections 363, 376, 366 of IPC and Section 5/6 of POCSO Act.

It is submitted by the counsel for the applicant that although this Court while deciding fourth bail application of the applicant by order dated 31.07.2021 passed in M.Cr.C. No.37188/2021 has considered the evidence of the prosecutrix, but thereafter her father had also been examined and in his evidence, he has stated that the prosecutrix was aged about 17 years and 6 months. It is further submitted that the applicant has married the prosecutrix.

Per contra, the application is vehemently opposed by the counsel for the State.

The Supreme Court in the case of **Independent Thought Vs. Union of India and another** reported in **(2017) 10 SCC 800**, has

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read down the provision of exception 2 to Section 375 of IPC and has held that physical relationship with a minor wife, i.e., below the age of 18 years would also come within the category of rape.

Accordingly, in absence of any change in circumstance, no case is made out for grant of bail.

The application fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge

Abhi