

THE HIGH COURT OF MADHYA PRADESH

CRR No. 218/2018

Manoj Yadav Vs. State of M.P.

Gwalior, Dated: 17/1/2018

Shri Rajmani Bansal, learned counsel, for the applicant.

Shri Rajesh Pathak, learned Public Prosecutor, for the respondent/State.

With the consent of learned counsel for the parties, this criminal revision is heard finally at the motion stage and the following order is passed upon the perusal of material on record.

ORDER

1. The applicant has filed this criminal revision under Sections 397 read with 401 of the CrPC against a part of the order dated 15/12/2017 passed by the court of Seventh Additional Sessions Judge (Dacoity) Gwalior (for short "the court") in MJC No. 2010/2017 case title Manoj Yadav Vs. State of M.P., whereby the learned ASJ has allowed the application of the applicant under Section 451 of the CrPC (for short "the application") with a condition, in addition to other conditions, that he shall furnish a bank guarantee of Rs.1,00,000/- (One Lakh) in the court before taking a car bearing Registration No. MP07 CD 5171 (for short "the car") on interim custody.

2. The short facts for adjudication of this revision are that the police of Police Station Panihar district Gwalior in Crime No. 127/2017 had seized the car. The applicant filed the application seeking the car on

interim custody before the Court. The learned ASJ having heard learned counsel for the parties, has passed the order on 15/12/2017, whereby he allowed the application of the applicant on the conditions that he would furnish a supurdiginama of Rs.4,00,000/- (Four Lakh) with a bank guarantee of one lakh rupees besides the compliance of incidental conditions which are not material to mention in this order. Feeling aggrieved by the part of the order of furnishing bank guarantee, the applicant has filed this revision.

3. Learned counsel for the applicant submits that the applicant is the registered owner of the car, therefore, the bank guarantee is absolutely unnecessary. Moreover, the learned ASJ has not mentioned in the impugned order what are the circumstances which necessitate him to seek bank guarantee of the said amount. He submits that getting of a bank guarantee from a bank is a very tedious, time-consuming and cumbersome process. For seeking bank guarantee, he has to deposit in the bank concerned one lakh rupees in cash or he has to mortgage an unmovable property of his ownership having market value more than one lakh rupees with the bank by executing a registered mortgage deed of it for which he has to spend hefty amount of money in affixing stamp duty on the deed. He has also to

pay the bank incidental charges against the bank guarantee. Moreover, the bank guarantee is in general given for a limited period, and thereafter it lapses. For renewal of the bank guarantee, he has to repeat the same procedure. Thus, the condition of submitting the bank guarantee of the said amount causes untold financial and mental hardships to him. He submits that the applicant is ready to furnish a solvent surety of the amount equivalent to the amount of bank guarantee. Upon these submissions, he prays to strike off that impugned part of the order by allowing the revision.

4. Learned Public Prosecutor has somewhat defended the impugned part of the order with infirm arguments.

5. I have gone through the order carefully and meticulously. I find that the learned Special Judge has not given any reason even obliquely which has compelled him to seek a bank guarantee of one lakh rupees from the applicant while giving the car on interim custody to him, whereas the applicant is the registered owner. Taking into consideration the Sections of law in which the case is registered and the aggrieved status of the applicant in the case, I am of the confirmed opinion that no bank guarantee is required for giving the car on interim custody to the applicant. I am of the confirmed view that while

giving a property on interim custody harsh and oppressive conditions should not be imposed otherwise it virtually results into denial of the relief as sought for by the aggrieved person, and to nullify the spirit of the beneficial provisions of Section 451 CrPC. Therefore, the impugned part of the order directing the applicant to submit the bank guarantee of one lakh rupees is entirely arbitrary and dictatorial.

6. For the said reasons and discussion, I allow this revision and quash the impugned part of the order whereby the learned ASJ has sought the bank guarantee of one lakh rupees against the interim custody of the car. Instead, the applicant shall submit a solvent surety of the amount equivalent to the amount of bank guarantee to the satisfaction of the learned ASJ. It is made clear that the remaining part of the impugned order shall remain intact.

7. Accordingly, this revision is finally disposed of.

8. A copy of this order be sent to the concerned court without delay.

Certified copy as per rules.

(Rajendra Mahajan)
Judge