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THE HIGH COURT OF MADHYA PRADESH
MCRC No.14129/2018
(Bhupat Singh vs. State of M.P.)

Gwalior, Dated : 11.05.2018

Shri F.A. Shah, Counsel for the applicant.

Shri R.K. Awasthi, Public Prosecutor for the respondent/State.

Shri Brajesh Kumar Tyagi, Counsel for the complainant.

Case diary is available.

This second application filed under Section 439 of Cr.P.C. for grant of bail. The first application was dismissed on merits by order dated 15.12.2017 passed in M.Cr.C.No.23845/2017.

The applicant has been arrested on 20.02.2017 in connection with Crime No.16/2017 registered by Police Station Baroni, District Datia for offence punishable under Sections 302, 147, 148, 149 of IPC.

This repeat application has been filed on the ground that subsequent to the rejection of the first bail application on merits, the Co-ordinate Bench of this Court by order dated 2.4.2018 passed in M.Cr.C.No.12139/2018 and order dated 16.4.2018 passed in M.Cr.C.No.12162/2018 has granted bail to the co-accused persons. The case of the applicant is identical to that of the co-accused persons.

It is submitted by the counsel for the applicant that since all the eyewitnesses have been examined before the Trial Court, therefore, there is no possibility of winning over or tampering the said witnesses and considering the fact that the Co-ordinate Bench of this Court has granted bail to the co-accused persons by order dated 2.4.2018 and 16.4.2018, the applicant may also be released.

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

So far as the submissions made by the counsel for the applicant is concerned, it is not the case of the applicant that all the eyewitnesses who have been examined by the prosecution have turned hostile and they have not supported the prosecution case. Merely because the witnesses have been examined before the Trial Court and there is no possibility of winning over or tampering the witnesses, the same cannot be a sole ground to release the present applicant on bail and my view is fortified by the judgment passed by the Supreme Court in the case of **Virupakshappa Gouda & Anr. vs. State of Karnataka** reported in **(2017) 5 SCC 406** in which it has been held as under:-

"15. The court has to keep in mind what has been stated in *Chaman Lal v. State of U.P.* The requisite factors are: (i) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; (ii) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (iii) prima facie satisfaction of the court in support of the charge. In *Prasanta Kumar Sarkar v. Ashis Chatterjee*, it has been opined that while exercising the power for grant of bail, the court has to keep in mind certain circumstances and factors. We may usefully reproduce the said passage: (SCC p. 499, para 9)

"9. ... among other circumstances, the factors which are to be borne in mind while considering an application for bail

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are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail."

16. In *CBI v. V. Vijay Sai Reddy*, the Court had reiterated the principle by observing thus: (SCC p. 465, para 34)

"34. While granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words "*reasonable grounds for believing*" instead of "*the evidence*" which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to

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produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

(emphasis in original)

17. From the aforesaid principles, it is quite clear that an order of bail cannot be granted in an arbitrary or fanciful manner. In this context, we may, with profit, reproduce a passage from *Neeru Yadav v. State of U.P.*, wherein the Court setting aside an order granting bail observed: (SCC pp. 514-15, para 16)

“16. The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the second respondent? We are not oblivious of the fact that the liberty is a priceless treasure for a human being. It is founded on the bedrock of the constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilised society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilised. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. [The] society by its collective wisdom through process of law can withdraw the liberty that it has

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sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law."

18. In this context what has been stated by a three-Judge Bench in *Dinesh M.N. v. State of Gujarat* is quite instructive. In the said case, the Court has held that where the Court admits the accused to bail by taking into consideration irrelevant materials and keeping out of consideration the relevant materials the order becomes vulnerable and such vulnerability warrants annulment of the order.

19. In the instant case, as is demonstrable, the learned trial Judge has not been guided by the established parameters for grant of bail. He has not kept himself alive to the fact that twice the bail applications had been rejected and the matter had travelled to this Court. Once this Court has declined to enlarge the appellants on bail, endeavours to

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project same factual score should not have been allowed. It is absolute impropriety and that impropriety calls for axing of the order.”

In the case of **Dinesh M.N. (S.P.) vs. State of Gujarat** reported in **(2008) 5 SCC 66** it has been held that the bail cannot be granted to an accused by taking into consideration irrelevant materials and in case such an order is passed then the order becomes vulnerable and such vulnerability warrants annulment of the order. Merely, the witnesses have been examined and ignoring the fact that they have supported the prosecution case, in the considered opinion of this Court the bail cannot be granted only on the ground that now there is no possibility of winning over or tampering the prosecution case.

It is well settled principle of law that while considering the bail application, the gravity of the offence and allegations against the accused persons is to be taken into consideration. The severity of punishment in case of conviction is also one of the relevant consideration for deciding the bail application and only after considering the nature of accusation, then the question would arise that whether there is any possibility of winning over or tampering with the prosecution witnesses or not. But ignoring all other material facts, the bail cannot be granted merely on the ground that since the eyewitnesses and material witnesses have been examined, therefore, there is no possibility of winning over or tampering the prosecution witnesses. In the present case, since none of the eyewitness has turned hostile and all the witnesses have

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supported the prosecution case and considering the allegations made against the applicant, this Court is of the considered opinion that the order passed by the Coordinate Bench of this Court in M.Cr.C.No.12139/2018 and M.Cr.C.No.12162/2018 thereby granting bail to the co-accused Kaptan Singh Rawat and Mukesh Rawat cannot be treated as precedent.

Accordingly, this application fails and is hereby **dismissed**.

(alok)

**(G.S. Ahluwalia)
Judge**