

HIGH COURT OF MADHYA PRADESH
MCRC No.22796/2018
Sanjay Bhadoriya vs. State of MP.

Gwalior, dtd. 04/07/2018

Shri Ravi Choudhary, Counsel for the applicant.

Shri Prakhar Dhengula, Public Prosecutor for the respondent/State.

Case diary is available.

This is third application under Section 439 of CrPC for grant of bail. The first application was dismissed on merits by order dated 24/4/2018 passed in MCRC No. 15055/2018 and the second application was dismissed as withdrawn by order dated 14/5/2018 passed in MCRC No. 17597/2018.

The applicant has been arrested on 4/4/2018 in connection with Crime No. 218/2018 registered by Police Station Cantt. District Guna for offence punishable under Sections 307, 294, 458, 195-A, 427, 34 of IPC and Section 25/27 of Arms Act.

It is submitted by the counsel for the applicant that subsequent to the rejection of the first bail application, the co-ordinate Benches of this Court, by orders dated 31/5/2018 and 4/6/2018, have granted bail to co-accused Vishnu Bhadoriya and Sonu Khangar in MCRC No. 20814/2018 and 21014/2018 respectively. It is further submitted that relying on the orders passed by the co-ordinate Benches of this Court, the trial Court has also granted bail to co-accused Somendra Rajawat @ Shetti by order dated 20/6/2018. It is further submitted that the case of the applicant is identical to that of the co-accused persons and, therefore, he should also be extended the same benefit. It is further submitted that although the first bail application was dismissed on merits, but certain factual

aspects were not mentioned in the order passed by this Court and, therefore, it amounts to change in circumstances. The counsel for the applicant has also submitted that while deciding the bail application, this Court should have passed the order in detail by discussing the merits of the case and since the same was not done, therefore, it amounts to change in circumstance. It is further submitted that in the FIR, it is mentioned by the complainant that in the year 2016, co-accused Vishnu Bhadoriya and Somendra Rajawat and two other persons had assaulted the son and other relatives of the complainant as a result of which, they were facing trial and today at about 10:51 in the night, Vishnu Bhadoriya called his son Shivam on mobile and started abusing him and extended threat to kill him. Thereafter, at about 11:20 in the night, the complainant along with his family members were inside his house. At that time, the applicant, co-accused Vishnu Bhadoriya, Somendra Rajawat @ Shetti and Sonu Khangar came to his house. Co-accused Shetti @ Somendra and Vishnu Bhadoriya were having firearms in their hands whereas the applicant and co-accused Sonu Khangar were having lathis and they started abusing. They were threatening that in case if the statements are not changed, then they would be killed. They also claimed that now if they are required to go to the jail, then they would go to jail only after killing them. It is also mentioned in the FIR that thereafter, with an intention to kill the complainant, gunshots were fired, however, the entire family saved themselves by either lying on the ground or by taking shelter behind the wall. It is further mentioned that with an intention to commit serious offence, the co-accused persons entered inside the house of the complainant by

climbing over the wall and broke open the doors and windows of the house and started assaulting him and his sons by fists and blows and lathis as a result of which, the complainant and his sons had suffered injuries. The police came on the spot and, after noticing the police, the accused persons fled away.

It is submitted that so far as the allegation of pressurizing to change the statements in other case is concerned, it is false. It is alleged that FIR No. 303/2016 was registered in which the relatives of the complainant are not the witnesses. It is further submitted that the applicant is being tried for offence under Section 302 of IPC in which neither the complainant nor his sons are the witnesses. It is further submitted that on 11/3/2018, an employee of the applicant namely Sonu Khangar was assaulted by the son of the complainant and one another person and on the basis of the complaint, FIR at Crime No. 196/2018 has been registered by Police Station Kotwali, District Guna.

Before considering the submissions made by the counsel for the applicant, this Court gave a word of caution to the counsel for the applicant that in case if he invites an order on merits in detail, then it may have some repercussion on the outcome of the trial. It was also informed that this Court is not required to pass an order in detail and detailed discussion and elaborate documentation of merits is to be avoided [kindly see Vaman Narain Ghiya v. State of Rajasthan reported in (2009) 2 SCC 281], but if the counsel for the applicant insists that the same may be done, then in that situation, the entire responsibility would be that of the applicant or his counsel only. Again, it was replied by the counsel for the applicant that an order on merits in detail

is required. However, the submissions made by the counsel for the applicant is not in accordance with law, but since the applicant is insisting to do so, then this Court is left with no other option but to decide the application on merits in detail.

First of all, it is submitted by the counsel for the applicant that after the first bail application of the applicant was rejected by this Court, two co-ordinate Benches have granted bail to co-accused Vishnu Bhadoriya and Sonu Khangar and relying on these orders, the trial Court has also granted bail to Somendra Rajawat @ Shetti.

The orders dated 31/5/2018 and 4/6/2018 passed by two co-ordinate Benches of this Court in MCRC Nos. 20814/2018 and 21014/2018 respectively have been placed on record. Although, these orders were passed subsequent to the dismissal of the first bail application of the applicant, however, from both these orders, it is clear that the fact of rejection of the bail application of the applicant was not brought to the notice of the Court. This Court is conscious of the fact that the negative parity does not apply, but at the same time, judicial discipline requires that while arguing the bail application of the co-accused, each and every fact of the case should be brought to the notice of the Court. Since, there is no reference in both the orders passed by the co-ordinate Benches regarding the rejection of the first bail application of the applicant, this Court is of the considered opinion that since the rejection of the first bail application of the applicant was not taken note by the co-ordinate Benches of this Court, therefore, this Court must decide this application independently without taking into consideration the orders passed by the co-ordinate Benches.

The next contention made by the counsel for the

applicant is that in the FIR at Crime No. 303/2016 registered by Police Station Kotwali, District Guna, neither the complainant nor his relatives are connected with the matter. A specific question was put to the counsel for the applicant that as to whether any affidavit of the applicant regarding this factual statement has been filed along with the bail application or not, then it was fairly conceded that he is making the statement on the basis of the instructions given by the applicant and no such affidavit has been filed.

The FIR in Crime No. 303/2016 registered at Police Station Kotwali, District Guna has been filed along with the bail application. This FIR was lodged by one Vikash Agrawal and he has specifically stated that on 9/6/2016 at about 9:45 pm, he along with his cousin brother namely Satyam were sitting in his shop. Co-accused Vishnu Bhadoriya along with other persons came inside the shop and assaulted them as well as also caused damage to the shop. In the present case, the complainant has specifically mentioned that Satyam is his son. The son of his brother-in-law namely Vikash and his son were beaten by co-accused Vishnu Bhadoriya and with an intention to pressurize them to change their version in respect of that case, the applicant and other co-accused persons have committed this offence. Thus, it is clear that the son of the complainant was one of the victim in Crime No. 303/2016 registered by Police Station Kotwali, District Guna and the allegation made by the complainant that present offence has been committed only with an intention to deter the complainant and his family members from deposing against the accused persons in Crime No. 303/2016 appears to be correct. Thus, the submission made by the counsel for the applicant is factually

incorrect and cannot be accepted.

At this stage, it was submitted by the counsel for the applicant that his submission is that the applicant is not an accused in Crime No. 303/2016 registered at Police Station Kotwali, District Guna. However, the applicant has fallen in a trap laid by himself and it is very difficult for him to come out of that. While arguing, the counsel for the applicant has referred to the FIR at Crime No. 196/2018, which was lodged by Sonu Khangar, who is an employee of the applicant, in Police Station Kotwali, District Guna and has submitted that since Sonu Khangar was beaten by the complainant party, therefore, by way of counter-blast, the false FIR has been lodged.

While this Court was going through the FIR in Crime No. 196/2018 registered at Police Station Kotwali, District Guna, a question was put to the counsel for the applicant that in the said FIR, it is nowhere mentioned that Sonu Khangar is the employee of the applicant. In reply to the query, it was submitted by the counsel for the applicant that in that FIR, it is specifically mentioned by Sonu Khangar, that when he along with his employer Vishnu Bhadoriya were going when they were attacked and Vishnu Bhadoriya is the partner of the applicant in the business. Thus, the applicant himself has admitted that the present applicant has close association with Vishnu Bhadoriya and Vishnu Bhadoriya is one of the accused in Crime No. 303/2016 as well as in the present case. Thus, it cannot be said that the applicant had no reason to remain present on the spot along with Vishnu Bhadoriya.

The another submission made by the counsel for the applicant that in a case under Section 302 of IPC, he has

placed the list of the witnesses and the name of the complainant or his son is not mentioned as a witness, therefore, it cannot be said that the offence has been committed because of that case.

So far as the list of the witnesses filed by the applicant is concerned, it is not clear that whether any relative or distant relative of the complainant has some connection with the said case or not. Even otherwise, in the present case, in the FIR, it is specifically mentioned that the complainant party was attacked by the accused persons to pressurize them to change their versions in the trial of Crime No. 303/2016, therefore, the list of witnesses in another criminal case has no relevance in the present case.

This Court, while deciding the first bail application by order dated 24/4/2018 passed in MCRC No. 15055/2018, had specifically mentioned that the incident in question had occurred because of the incident which has taken place in the year 2016 which was committed by co-accused Vishnu Bhadoriya in Crime No. 303/2016 and has nothing to do with the offence under Section 302 of IPC, therefore, the reference to the list of the witnesses of the trial under Section 302 of IPC has no relevance in this case.

At this stage, the counsel for the applicant further submitted that the Supreme Court in the case of **Sanjay Chandra v. Central Bureau of Investigation** reported in **(2012) 1 SCC 40** has held that the bail should not be denied to teach lessons to the person whose offence is yet to be proved.

The Supreme Court in the case of **Virupakshappa Gouda and Anr. Vs. State of Karnataka and Anr.** reported in **(2017) 5 SCC 406** has held as under:-

"14. Be it noted, though the aforesaid passages from Sanjay Chandra (supra) have their relevance but the same cannot be made applicable in each and every case for grant of bail. In the said case, the appellant-accused was facing trial for the offences under Sections 120-B, 420, 468, 471 and 109 of IPC and Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988. Thus, the factual matrix was quite different. That apart, it depends upon the nature of the crime and the manner in which it is committed. A bail application is not to be entertained on the basis of certain observations made in a different context. There has to be application of mind and appreciation of the factual score and understanding of the pronouncements in the field.

15. The court has to keep in mind what has been stated in Chaman Lal v. State of U.P. reported in (2004) 7 SCC 525. 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 reported in (2010) 14 SCC 496, 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 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.””

The Supreme Court in the case of **Dinubhai Boghabhai Solanki v. State of Gujarat and Ors.** reported in **(2018) 11 SCC 129** has stated that now the law is changed and from accused centric approach, the law has also shifted to victim centric approach. The Supreme Court has held as under:-

“**34.** At the same time, realisation is now dawning that other side of the crime, namely, victim is also an important stakeholder in the criminal justice and welfare policies. The victim has, till recently, remained forgotten actor in the crime scenario. It is for this reason that “victim justice” has become equally important, namely, to convict the person responsible for a crime. This not only ensures justice to the victim, but to the society at large as well. Therefore, traditional criminology coupled with deviance theory, which had ignored the victim and was offender focussed, has received significant dent with focus shared by the discipline by victimology as well. An interest in the victims of the crime is more than evident now. Researchers point out at least three reasons for this trend. First, lack of evidence that different sentences had differing impact on offenders led policy-makers to consider the possibility that crime might be reduced, or at least constrained, through situational measures. This in turn led to an emphasis on the immediate circumstances surrounding the offence, of necessity incorporating the role of the victim, best illustrated in a number of studies carried out by the Home Office (Clarke and Mayhew 1980). Second, and in complete contrast, the developing impact of feminism in sociology, and latterly criminology, has encouraged a greater

emphasis on women as victims, notably of rape and domestic violence, and has more widely stimulated an interest in the fear of crime. Finally, and perhaps most significantly, criticism of official statistics has resulted in a spawn of victim surveys, where sample surveys of individuals or households have enabled considerable data to be collated on the extent of crime and the characteristics of victims, irrespective of whether or not crimes become known to the police. It is for this reason that in many recent judgments rendered by this Court, there is an emphasis on the need to streamline the issues relating to crime victims.

35. There is a discernible paradigm shift in the criminal justice system in India which keeps in mind the interests of victims as well. Victim oriented policies are introduced giving better role to the victims of crime in criminal trials. It has led to adopting two pronged strategy. On the one hand, law now recognises, with the insertion of necessary statutory provisions, expanding role of victim in the procedural justice. On the other hand, substantive justice is also done to these victims by putting an obligation on the State (and even the culprit of crime) by providing adequate compensation to the victims. The result is that private parties are now able to assert "their claim for fair trial and, thus, an effective 'say' in criminal prosecution, not merely as a 'witness' but also as one impacted".

36. That apart, it is in the larger interest of the society that actual perpetrator of the crime gets convicted and is suitably punished. Those persons who have committed the crime, if allowed to go unpunished, this also leads to weakening of the criminal justice system and the society starts losing faith therein. Therefore, the first part of the celebrated dictum "ten criminals may go unpunished but one innocent should not be convicted" has not to be taken routinely. No doubt, latter part of the aforesaid phrase, i.e., "innocent person should not be convicted" remains still valid. However, that does not mean that in the process "ten persons may

go unpunished” and law becomes a mute spectator to this scenario, showing its helplessness. In order to ensure that criminal justice system is vibrant and effective, perpetrators of the crime should not go unpunished and all efforts are to be made to plug the loopholes which may give rise to the aforesaid situation.”

Thus, it is clear that while deciding the bail application, the allegations made against the accused also play important role. Where the offence is committed against the son of the complainant in the year 2016 and the applicant along with other co-accused persons, who are also accused in the said case, came to the house of the complainant and threatened him to change his version and when the complainant refused to do so, indiscriminate firing was done, it is clear that it is direct interference in the Justice Delivery System. Where the accused tried to win over the witnesses by muscle power so that they cannot narrate the truth before the trial Court then, the conduct of the accused has to be dealt with firmly.

Under these circumstances, this Court is of the considered opinion that it is not a fit case for grant of bail.

Accordingly, it is **rejected**.

Before parting with this order, this Court would like to again mention that this Court was conscious of the fact that the order in detail should not have been passed, but since despite the caution given by this Court, the same has been invited by the applicant himself, then this Court was left with no other option but to mention it in detail.

(G. S. Ahluwalia)
Judge