

THE HIGH COURT OF MADHYA PRADESH

MCRC No. 37120/2018
(Radheshyam Vs. State of M.P.)

Gwalior, Dated: 20/9/2018

Shri Puran Kulshrestha, Counsel for the applicant

Shri B.P.S. Chouhan, Counsel for the State.

Case diary is available.

This is the fifth bail application filed by the applicant under Section 439 of Cr.P.C. The previous applications were withdrawn by the Counsel for the applicant, after realizing that the Court is not inclined to grant bail.

It is submitted by the Counsel for the applicant that the applicant is in jail from 19-8-2017, in connection with crime no. 28/2017 registered at Police Station Crime Branch, Gwalior for offences under Section 420,467,468,471,120B of I.P.C.

It is submitted by the Counsel for the applicant, that the applicant is an old person, aged about 66 years and is a retired Patwari. Although there are allegations against the applicant that he was involved in conspiracy of preparing forged revenue documents which were being used for furnishing bail in the Court, but he is in jail from 19-8-2017 i.e., more than one year and only one witness has been examined so far, therefore, considering the advance age of the applicant, he may be granted bail. Further, this Court while considering the bail application of the co-accused Rajkumar in M.Cr.C. No 7259/2018 has granted bail considering the fact that by that time, even the charges were not framed, however, it is fairly conceded by the Counsel for the applicant, that now the charges have also been framed and the evidence is being recorded. To buttress his contentions,

the Counsel for the applicant has relied upon the judgments passed by the Supreme Court in the case of **Sumeet Saluja Vs. State of Uttar Pradesh** reported in **(2018) 1 SCC (Cri) 540**, **Babu Singh & Ors. Vs. State of Uttar Pradesh** reported in **AIR 1978 SC 527**, **Anil Ari Vs. State of West Bengal** reported in **(2009) 3 SCC (Cri) 1377**, and judgments of this Court passed in the case of **Kallaram Vs. State of M.P.** reported in **1996 (II) MPWN 162**, **Lal Singh Vs. State of M.P.** reported in **1999 (2) MPWN 283**. It is further submitted by the Counsel for the applicant that in case the applicant is not granted bail, then it is possible that only his dead body may come out of the jail.

Per contra, it is submitted by the Counsel for the State that the complainant, who himself is a practicing lawyer, had made a complaint to the effect that bails are being furnished on the basis of forged revenue documents and after the accused persons are released on bail, they are absconding. On the basis of such complaint, the police arrested the applicant and other co-accused persons. The applicant is a retired Patwari and several forged Rin Pustikas of various persons were recovered from the possession of the applicant. The applicant could not explain as to why he had kept the forged Rin Pustikas with him. It is further submitted that in fact the applicant had provided the forged Rin Pustikas to other co-accused persons, which were being utilized for furnishing bail. The applicant has played fraud on the Court and being the retired revenue employee (Patwari),

the applicant was well aware of the revenue proceedings and therefore, his active involvement in the case is writ large.

Considering the age of the applicant, this Court is of the considered opinion, that while considering the bail applications, the allegations made against the accused play an important role and irrespective of the allegations, a person cannot be released on bail, merely on the ground of advanced age.

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

"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."

16. In *CBI v. V. Vijay Sai Reddy* reported in (2013) 7 SCC 452, 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 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.* reported in (2014) 16 SCC 508, 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 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* reported in (2008) 5 SCC 66 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 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.

It is well settled principle of law that while considering the bail application, the gravity of the offence and allegations against the accused persons are 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.

Thus, the serious allegations of preparing forged Rin Pustikas for the purpose of furnishing bail in the Court of law, cannot be ignored. Not only the bails were being furnished on the basis of forged rin pustikas, but after the absconsion of the accused persons, the Trial must have been held up. Thus, the act of the applicant is the direct interference with the dispensation of justice. So far as the co-accused Rajkumar is concerned, the only evidence against the said co-accused was the confessional statements of the co-accused persons and that too, the role assigned to him was that he was running a photocopy shop and the forged documents were being photocopied by him.

So far as the contention made by the Counsel for the applicant that in case the applicant is not granted bail, then only his dead body may come out of the jail, is concerned, this Court is of the considered opinion, that such type of arguments are nothing but an attempt to emotionally blackmail the Court. The lawyers must try to avoid advancing such type of arguments, otherwise, it may amount to Contempt of Court, as the Courts cannot be held liable for the consequences which an accused would be facing for doing criminal acts.

Considering the facts and circumstances of the case, this Court is of the considered opinion, that this is not the fit case for grant of bail. The application is accordingly **rejected**.

(G.S. Ahluwalia)
Judge