

THE HIGH COURT OF MADHYA PRADESHCRA-6203/2020

[Gaurav Sharma vs. State of M.P.]

Gwalior, Dated 13.01.2021

Shri Pradeep Katare, learned counsel for the appellant.

Shri Ramendra Singh Gurjar, learned Panel Lawyer, for the respondent/State.

Matter is heard through Video Conferencing.

I.A.No.24183/2020, an application for urgent hearing, is taken up, considered and allowed for the reasons mentioned therein.

Present Criminal Appeal has been filed under Section 14-A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the order dated 3/12/2020 passed by Special Judge, Bhind, whereby the application of the appellant under Section 439 of Cr.P.C.for grant of bail has been rejected.

Appellant is in custody since 5.4.2019 for the alleged offences registered at Crime No.192/2019 at Police Station Dehat, District, Bhind (M.P.) for the the offences punishable under Sections 302, 307, 294, 120-B, 34 of IPC, section 25,27 of Arms Act and under Section 3(2)(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “**the SC & ST Act**”).

It is submitted by learned counsel for the appellant- Gaurav **Sharma** that this is the sixth application under Section 439 of

Cr.P.C. The appellant is in custody since 5.4.2019. Earlier two appeals were withdrawn on 13.7.2020 and 19.11.2020. The last appeal was rejected on merit on 3.2.2020 wherein it was observed that other witnesses are yet to be examined. Thereafter during 3.2.2020 to 26.11.2020, five witnesses have been examined before the trial Court. Excluding Keshav (PW-3), no other witnesses had submitted that the present appellant has committed any offence. The statement given by Keshav under section 161 Cr.P.C. is unreliable. According to his statement, he was informed by some other persons about the incident, which means that the statement given by Keshav is on hearsay evidence, that cannot be taken into consideration. Rest of the witnesses have not stated anything against the present appellant. In the dying declarations also the deceased had not taken the name of the present appellant for committing the offence. Hence, in the aforesaid changed circumstances, prayed for grant of bail.

Per contra, State Counsel has vehemently opposed the bail and has submitted that some earlier applications were rejected on merit, therefore, this application (sixth) could not be considered. It is further submitted that in the dying declaration, the deceased himself has stated that the offence was also committed by three other persons which reflects the involvement of the present appellant in

the case, hence prayed for dismissal of the appeal.

Heard learned counsel for the parties at length through Video Conferencing and considered the arguments advanced by them and perused the available case-diary.

Considering the arguments advanced by learned counsel for the appellant along with records produced and also considering the changed circumstances, ie., during 3.2.2020 to 26.11.2020, five witnesses were examined, without commenting upon the merits of the case, the application is allowed and it is hereby directed that the appellant shall be released on bail on his furnishing personal bond of **Rs.1,00,000/-(Rupees One Lac Only)** with one solvent surety of the like amount to the satisfaction of the Court concerned for his regular appearance before the Court concerned on the dates fixed by the Court concerned.

In view of COVID-19 pandemic, the Jail Authorities are directed that before releasing the applicants, their Corona Virus test shall be conducted and if it is found negative, then the concerned local Administration shall make necessary arrangements for sending the applicant to his house, and if their test is found positive then the applicants shall be immediately sent to concerning hospital for their treatment as per medical norms. If the applicants are fit for release and if they are in a position to make their personal

arrangements, then they shall be released only after taking due travel permission from local administration. After release, the applicants are further directed to strictly follow all the instructions which may be issued by the Central Government/State Government or Local Administration for combating the COVID-19. If it is found that the applicants have violated any of the instructions (whether general or specific) issued by the Central Government/State Government or Local Administration, then this order shall automatically lose its effect, and the Local Administration/Police Authorities shall immediately take them in custody and would send them to the same jail from where they were released.

This order will remain operative subject to compliance of the following conditions by the appellant :-

1. The appellant will comply with all the terms and conditions of the bond executed by him;
2. The appellant will cooperate in the investigation/trial, as the case may be;
3. The appellant will not indulge himself in extending inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to the Police Officer, as the case may be;
4. The appellant shall not commit an offence similar to the offence of which he is accused;
5. The appellant will not move in the vicinity

of complainant party and applicant will not seek unnecessary adjournments during the trial;

6. In case the applicant repeat the same nature of offence, the trial Court will be at liberty to cancel this order without prior information to this Court.

7. The appellant will not leave India without previous permission of the trial Court/Investigating Officer, as the case may be; and

8. The appellant will inform the SHO of concerned Police Station about his residential address in the said area and it would be the duty of the State Counsel to send **E-copy** of this order to SHO of concerned Police Station for information.

E- copy of this order be sent to the trial Court concerned for compliance.

Certified copy/ e-copy as per rules/directions.

(Rajeev Kumar Shrivastava)
Judge