

The High Court Of Madhya Pradesh**MCRC-10319-2020***(BANIYA KUSHWAH Vs THE STATE OF MADHYA PRADESH)***Gwalior, Dated:02.06.2020**

Shri Tapendra Sharma, learned counsel for the applicant.

Shri R.S. Gurjar, learned Panel Lawyer for respondent/State.

Matter is heard through Video Conferencing.

Heard on **I.A.No.4371/2020**, an application for grant of interim bail to the applicant for two months.

This is the **second** bail application u/S.439 Cr.P.C filed by the applicant for grant of bail. Earlier bail application was dismissed as withdrawn on 22.11.2019 with liberty to move after examination of eye witnesses.

Applicant has been arrested on 23.08.2019 by Police Station Sarai Chhola, District Morena (M.P.) in connection with Crime No.103/19 registered for offence under Sections 302, 323, 324, 294, 506, 34 of IPC.

It is submitted by the learned counsel for the applicant Baniya Kushwah that the present applicant is in custody since 23.08.2019. This is repeat bail application. First bail application was rejected on 22.11.2019. At that time this Court had granted liberty to file fresh application after examination of eye witnesses. Prosecution witnesses are intentionally causing delay in recording their evidence. The present applicant had not committed any offence which comes in the

periphery of Section 302 of IPC, rather trial Court has framed charges under Section 304 read with Section 34 of IPC. As prosecution witnesses are intentionally avoiding recording of their evidence, therefore, looking to the present Covid -19 condition, the applicant be granted interim bail as the working of the trial Courts is adversely affected due to present Covid -19 condition and Courts are not able to dispense with routine judicial work. He further undertakes to abide by all the terms and conditions of guidance, circulars and directions issued by Central Government, State Government as well as Local Administration regarding measures in respect of COVID-19 Pandemic and maintain hygiene in the vicinity while keeping physical distancing.

Counsel for the State opposed the prayer and has submitted that the offence made out is under Section 301 of IPC which is having same punishment as under Section 302 of IPC, therefore, there is no change circumstance under which the present repeat bail application could be considered. Earlier application was dismissed as withdrawn with specific liberty to move afresh after examination of eye witnesses. Till date, no witness has been examined. It is further submitted that the offence is registered under Sections 302, 323, 324, 294, 506, 34 of IPC, hence, the applicant does not deserve any sympathy.

Heard learned counsel for the parties at length through VC and considered the arguments advanced by them and perused the available

record.

The Supreme Court by order dated 23-3-2020 passed in the case of **IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS** in **SUO MOTU W.P. (C) No. 1/2020** has directed all the States to constitute a High Level Committee to consider the release of prisoners in order to decongest the prisons. The Supreme Court has observed as under :

“The issue of overcrowding of prisons is a matter of serious concern particularly in the present context of the pandemic of Corona Virus (COVID – 19).

Having regard to the provisions of Article 21 of the Constitution of India, it has become imperative to ensure that the spread of the Corona Virus within the prisons is controlled.

We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are under trial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.

It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.”

Considering the facts and circumstances of the case, without commenting upon the merits of the case, as till date no prosecution witness has been examined, looking to the Covid -19 condition,

I.A.No.4371/2020 is hereby allowed. It is directed that the applicant be released on bail for a temporary period of two months from the date of his release on bail on his furnishing a personal bond in the sum of **Rs.1,00,000/- (Rs. One Lakh Only)** with one surety in the like amount to the satisfaction of the Chief Judicial Magistrate of the concerned district. Chief Judicial Magistrate shall ensure that after furnishing bail, the bail papers are sent to the Court concerned. The applicant shall surrender before the trial Court just after completion of two months from the date of release on bail. The intimation regarding surrender of the applicant be furnished to this Court. In case of failure to comply the order, this bail order shall automatically stand cancelled.

In view of COVID-19 pandemic, the Jail Authorities are directed that before releasing the applicant, his 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 the test is found positive then the applicant shall be immediately sent to concerning hospital for his treatment as per medical norms. If the applicant is fit for release and if he is in a position to make his personal arrangements, then he shall be released only after taking due travel permission from local administration. After release, the applicant is further directed to strictly follow all the instructions which may be issued by the Central Govt./State Govt. or Local Administration for combating the

Covid19. If it is found that the applicant has violated any of the instructions (whether general or specific) issued by the Central Govt./State Govt. or Local Administration, then this order shall automatically lose its effect, and the Local Administration/Police Authorities shall immediately take him in custody and would send him to the same jail from where he was released.

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

1. The applicant will comply with all the terms and conditions of the bond executed by him;
2. The applicant will cooperate in the investigation/trial, as the case may be;
3. The applicant will not indulge **herself/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 applicant shall not commit an offence similar to the offence of which **he/she** is accused;
5. The applicant will not move in the vicinity of complainant party and applicant will not seek unnecessary adjournments during the trial;
6. The applicant will not leave India without previous permission of the trial Court/Investigating Officer, as the case may be; and
7. The applicant will inform the SHO of concerned police station about him/his residential address in the said area and it would be the duty of the Public Prosecutor to send **E-copy** of this order to SHO of concerned police station for information.
- 8. The applicant shall enroll himself with the District Magistrate, Morena as "COVID-19**

Warriors” by entering his name in a Register named as COVID-19 WARRIOR REGISTER. The applicant then, shall be assigned work of COVID-19 disaster management at the discretion of District Magistrate, Morena by taking all prescribed precautions. The nature, quantum and duration of the work assigned is left to the wisdom of District Magistrate, Morena. This Court expects that the applicant shall rise to the occasion to serve the society in such crisis by discharging his fundamental duty of rendering national service when called upon to do so as per Article 51-A(d) of the constitution.

Registry is directed to communicate this order through e-mail to the concerned District Magistrate for compliance.

The District Magistrate concerned is directed to intimate this Court in case condition No. 8 is not complied with and on receipt of any such intimation, Registry is directed to list the matter before appropriate Bench as PUD.

I.A.No.4371/2020 stands allowed and disposed of.

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

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