

HIGH COURT OF MADHYA PRADESH
1 **M.Cr.C.No.10850/2020**
(Gajendra alias Didiya Rawat Vs. State of M.P.)

Gwalior Bench:

Dated -19/05/2020

Shri Mayank Vajpayee, learned counsel for the applicant.

Shri Vijay Sundaram, learned PL for the respondent/State.

Matter is heard through Video Conferencing.

The applicant has filed this sixth bail application u/S.439 Cr.P.C for grant of bail. Applicant has been arrested on 23/11/2018 by Police Station Dabra, District Gwalior in connection with Crime No. 758/2018 registered for offence for the offences punishable under Sections 353,186,392 of the IPC and Sections 11/13 of MPDVPK Act.

It is the submission of learned counsel for the applicant that false case has been registered against him and he is suffering confinement since 23/11/2018; whereas, co-accused has already been granted benefit of bail vide order dated 24/2/2020 in M.Cr.C.No. 2960/2020. Under Section 353 of IPC, maximum punishment as prescribed is 2 years and applicant learnt the lesson hardway and would never commit the same nature of offence in future and would not involve in any illegal mining activities, otherwise, his bail application may be dismissed forthwith. Looking to the prevailing condition of COVID-19, he seeks bail on sympathetic grounds also. He undertakes to cooperate in trial and further undertakes not to be a source of

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embarrassment or harassment to the complainant party in any manner. 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. Further looking to the situation of pandemic, he intends to serve the Nation by contributing his part by installing **Arogya Setu App** and by depositing Rs. 15,000/- in PMCARES Fund.

Counsel for the State opposed the prayer and prayed for dismissal of the bail application.

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

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

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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.”

After considering the rival submissions as well as considering the peculiar fact situation, wherein, we are facing wrath of pandemic COVID-19, this Court is of the considered opinion that applicant deserves to be released on bail.

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As this Court is not in a position to consider the facts of the case in detail, however, considering the fact that in view of Covid-19 pandemic, without commenting on the merits of the case, it is hereby directed that the applicant shall be released on bail, on his furnishing personal bond of **Rs.50,000/- (Rupees Fifty Thousand only)** to the satisfaction of trial Court and that he will have to install **Arogya Setu App**, if not already installed. **Bail bond shall be furnished within one and half month as and when situation moves out of Lock-down.**

In view of COVID-19 pandemic, the jail authorities are directed that before releasing the applicant, his preliminary Corona Virus test shall be conducted and if he is found negative, then the concerned local administration shall make necessary arrangements for sending the applicant to his house, and if he is found positive then the applicant shall be immediately sent to concerned 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

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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 sent him to the same jail from where he was released.

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

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 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 is accused;

5. The applicant will not be a source of embarrassment or harassment to the complainant party in any manner and applicant

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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;

7. The applicant shall deposit Rs.15,000/- in PM CARES Fund having Account Number : 2121PM20202, IFSC Code: SBIN0000691, SWIFT Code : SBININBB104, Name of Bank & Branch : State Bank of India, New Delhi Main Branch within one and half month.

8. The applicant will inform the SHO of concerned police station about 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.

Application stands allowed and disposed of.

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

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

(Anand Pathak)
Judge

jps/-