

HIGH COURT OF MADHYA PRADESH**M.Cr.C. No. 11528/2020****(Kallu alias Kartar Vs. State of M.P.)****Gwalior, Dated:02.06.2020**

Shri Rajesh Shukla, learned counsel for the applicant.

Shri C.P. Singh, learned Panel Lawyer, for respondent/State.

Shri Sohit Mishra, learned counsel for the complainant.

The applicant has filed this first bail application u/S.439 Cr.P.C for grant of bail. Applicant has been arrested on 14.02.2020 by Police Station Civil Lines, Distt. Morena (M.P.) in connection with Crime No.630/2019 registered for offence under Sections 452, 323, 325,294, 147, 148,149, 307 and 506 of IPC.

It is submitted by the learned counsel for the applicant Kallu alias Kartar that the present applicant is in custody since 14.02.2020. Earlier case was registered under Sections 452, 148, 147, 294, 325, 323, 149 of IPC, thereafter Section 307 of IPC has been enhanced. There is a counter case registered against the complainant of this case, wherein the accused persons, who were having *lathi*, have already been granted bail by the co-ordinate Bench of this Court. There are omnibus allegations against the present applicant. There is no overt act on the part of the present applicant and there is only allegation that he was standing at the place of incident having *lathi* in his hand. No deadly weapon was used in the incident. The applicant and complainant are neighbours. It is further submitted that in counter case father and brother of the present applicant have sustained serious

injuries on vital part of the body. Investigation is complete and charge-sheet has been filed, hence, prayed for grant of regular bail to the applicant. 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.

Per contra, learned Panel Lawyer as well as the learned counsel for the complainant have opposed the submissions and have submitted that in counter case, bail applications of some of the co-accused persons have already been rejected by the Court. The applicant is named in the F.I.R. and the offence is registered under Section 307 of I.P.C. It is further submitted that the applicant as well as complainant are neighbours and there is a dispute with regard to one water canal situated near their houses, hence, 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 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, as there is no overt act of the present applicant and he is alleged to have *lathi* in his hand, without commenting upon the merits of the case, the application is allowed and it is hereby directed that the applicant 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 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.

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 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 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 sent him to the same jail from where she 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 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 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 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.

(Rajeev Kumar Shrivastava)
Judge