

HIGH COURT OF MADHYA PRADESH

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M.Cr.C.No.11586/2020

(Hariom Vs. State of M.P.)

Gwalior Bench: Dated -19/05/2020

Shri R.S. Yadav, learned counsel for the applicant.

Shri C.P. Singh, learned PL for respondent No.1/State.

Smt. Rushi Sharma (Mishra), learned counsel for respondent No.2/complainant.

Matter is heard through Video Conferencing.

The applicant has filed this first bail application u/S.439 Cr.P.C for grant of bail. Applicant has been arrested on 21-01-2020 by Police Station, Station Road Morena in connection with Crime No.20/2020 registered for offence under Sections 376(2)(n), 201, 34 of IPC and Section 3/4, 5/6 of POCSO 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 21-01-2020 whereas charge-sheet has already been filed. It is further submitted that only on the basis of false allegation, he is suffering confinement because prosecutrix nowhere in her statement under Sections 161 and 164 of Cr.P.C. categorically spelt out the allegations. Apparently, they were in close proximity, therefore they shared intimacy. No video or photograph recovered from the possession of the applicant by the Investigating Officer to bring home the fact regarding blackmailing. He intends to marry prosecutrix who is aged more

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than 18 years. Applicant is NCC cadet and at the beginning of career long drawn confinement will ruin his career. He undertakes to cooperate in trial and would not be a source of embarrassment or harassment to the prosecutrix/complainant party in any manner. Further he would not move in the vicinity of complainant party. 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. Under the prevailing situation of Pandemic COVID-19 sympathetic consideration be made.

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

Learned counsel for the complainant matched the vehemence and submitted that looking to the fact that he is trying to coerce the prosecutrix to indulge into relation, his bail application be dismissed.

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

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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

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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.

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 two months 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

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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 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

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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 applicants 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. Applicant shall not move in the vicinity of prosecutrix and would not be source of embarrassment and harassment in any manner to her.

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.

9. Applicant shall deposit Rs.1,000/- 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.

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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

Anil*