

THE HIGH COURT OF MADHYA PRADESH**M.Cr.C. No.11863/2020***(Vicky @ Vikas Garg Vs. State of M.P.)*

Gwalior, Dated:-19/05/2020

Shri Puran Kulshreshtha learned counsel for the applicant.

Shri Anoop Nigam, learned Panel Lawyer for the respondent/State.

Matter is heard through video conferencing.

The applicant has filed this second bail application u/S.439 Cr.P.C for grant of bail. Applicant has been arrested on 31/10/2019 by Police Station Rampurkala Distt. Morena (M.P.) in connection with Crime No.89/2019 registered for offence under Sections 302, 120B and 34 of IPC.

It is submitted by learned counsel for the applicant that the applicant has filed this second bail application under Section 439 of Cr.P.C. for grant of bail. Earlier application was rejected by this Court vide order dated 21.01.2020 passed in M.Cr.C. No.52393/2019 and liberty was granted to file fresh application after recording of important prosecution witnesses. It is further submitted that after rejection of previous bail application, 9 prosecution witnesses have been examined before the trial Court, out of them, 7 witnesses who are main witnesses have not supported the prosecution case and remaining 2 witnesses are Government servants, one is Doctor and another is Police constable. Applicant is ready to abide by any stringent condition which may be imposed by this Court. Hence, prays

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for grant of bail looking to the evidence of aforesaid independent witnesses. 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.

Learned State counsel opposed the prayer and has submitted that though only 9 prosecution witnesses have been examined till date but total number of prosecution witnesses is 25 as per list. It is further submitted that offence is registered under Section 302, 120B, 34 of IPC and earlier application was rejected on merits. Hence, prayed to reject the bail application of the applicant.

At this juncture, learned counsel for the applicant has further submitted that only 4 witnesses out of the total prosecution witnesses are remained to be examined before the trial Court and remaining other witnesses have been given up by the prosecution.

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

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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.”

In view of the aforesaid and considering the facts and changed circumstances of the present case, without commenting upon the

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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 a 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

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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 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 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 any offence punishable under Sections of IPC;

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.

8. The applicant shall enroll himself with the SDM Sabalgarh as “COVID-19 Warrior” by entering his name in a Register named as COVID-19 WARRIOR REGISTER. The

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applicant then, shall be assigned work of Covid-19 disaster management at the discretion of SDM Sabalgarh by taking all prescribed precautions. The nature, quantum and duration of the work assigned is left to the the wisdom of SDM Sabalgarh. 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 **SDM Sabalgarh** 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.

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

*Shubhankar**