

**THE HIGH COURT OF MADHYA PRADESH****M.Cr.C. No.14221/2020***(Anand Kushwah Vs. State of M.P.)*

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**Gwalior, Dated:-02/06/2020**

Shri Ravi Dwivedi, learned counsel for the applicant.

Shri Sunil Dubey, 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 14.10.2019 by Police Station Bahodapur Distt. Gwalior (M.P.) in connection with Crime No.472/2019 registered for offence under Sections 307, 323, 294, 34 of IPC.

It is submitted by learned counsel for the applicant– Anand Kushwah that the applicant has not committed any offence. He has falsely been implicated in this case. Applicant is in custody since 14.10.2019, i.e. for more than 7 months. Earlier bail application filed by the applicant was rejected on merits by this Court on 10/01/2020. It is further submitted that after the rejection of previous bail application, sufficient time has been elapsed. Hence prays for grant of regular bail or interim bail for a period of 60 days. 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

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while keeping physical distancing.

Learned State counsel has vehemently opposed the prayer and has submitted that there is sufficient evidence available against the present applicant. Earlier bail application of the applicant was rejected on merits. It is also submitted that the custody period of the applicant is very short. Hence, prayed to reject the bail application of the applicant.

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

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

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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 aforesaid and considering the facts and circumstances of the present case, 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 for a temporary period of 60 days from the date of his release on his furnishing personal bond of **Rs.1,00,000/- (Rupees One Lakh 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. The applicant shall surrender before the trial Court immediately after

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completion of 60 days. 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 his 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

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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 any 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.

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**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\**