

HIGH COURT OF MADHYA PRADESH**M.Cr.C. No. 19784/2020****(Rakesh & Anr. vs. State of M.P.)****Gwalior, Dated: 03/7/2020**

Shri Anshu Gupta, learned counsel for the applicants.

Shri Sunil Dubey, learned Panel Lawyer for respondent/State.

Matter is heard through Video Conferencing.

I.A. No. 6711/2020, an application for urgent hearing, is taken up, considered and allowed for the reasons mentioned therein.

This is first application under Section 439 of CrPC for grant of bail.

The applicants have been arrested on 09/6/2020 in connection with Crime No.207/2020 registered at Police Station City Basoda, District Vidisha for offence under Section 34 (2) of Excise Act.

It is submitted by learned counsel for the applicants - **Rakesh and Laakhan Singh** that the allegation of recovery of 54 bulk litres of country-made liquor from the possession of the applicants is false. They have not committed any offence. It is further submitted that except the present case, no other criminal case is registered against the applicants. Hence, prayed for grant of bail to the applicants. They further undertake 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.

Counsel for the State opposed the prayer and prayed to reject the application.

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

Looking to the overall facts and circumstances of the case and without commenting on merits of the case, the application is allowed and it is hereby directed that the applicants shall be released on bail on each of them furnishing personal bond of **Rs.50,000/- (Rupees Fifty Thousand only)** with one solvent surety of the like amount to the satisfaction of the Court concerned for their regular appearance before the Court concerned.

In view of COVID-19 pandemic, the Jail Authorities are directed that before releasing the applicants, their Corona Virus test shall be conducted and if it is found negative, then the concerned local administration shall make necessary arrangements for sending the applicants to their house, and if the test is found positive then the said applicant shall be immediately sent to concerning hospital for her/his treatment as per medical norms. If the applicants are fit for release and if they are in a position to make their personal arrangements, then they shall be released only after taking due

travel permission from local administration. After release, the applicants are 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 any of the applicants have 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 in respect of the defaulter applicant, and the Local Administration/Police Authorities shall immediately take him/her in custody and would send him/her to the same jail from where he/she was released.

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

1. The applicants will comply with all the terms and conditions of the bond executed by them;
2. The applicants will cooperate in the investigation/trial, as the case may be;
3. The applicants will not indulge **herself/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 applicants shall not commit an offence similar to the offence of which they are accused;
5. The applicants will not move in the vicinity of complainant party and applicants will not seek unnecessary adjournments during the trial;

6. The applicants will not leave India without previous permission of the trial Court/Investigating Officer, as the case may be; and

7. The applicants will inform the SHO of concerned police station about their 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.

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

(Rajeev Kumar Shrivastava)
Judge

AKS