

**HIGH COURT OF MADHYA PRADESH****MCRC.No.24967/2020****(Dilip Yadav Vs. The State of M.P.)****Gwalior, Dated : 16.09.2020**

Ms. Uma Kushwaha, learned counsel for the applicant.

Shri Virendra Singh Rathore, learned Panel Lawyer for the State.

In the wake of unprecedented and uncertain situation due to outbreak of the Novel Corona virus (COVID-19) and considering the advisories issued by the Government of India, this application has been heard and decided through video conferencing to maintain social distancing. The parties are being represented by the respective counsel through video conferencing, following the norms of social distancing/ physical distancing in letter and spirit.

Heard the learned counsel for the parties.

The applicant has filed this second application u/S. 439 Cr.P.C. for grant of bail. The applicant has been arrested on 07.05.2020 by Police Station Pichhore District Gwalior (M.P.) in connection with Crime No.140/2019 registered in relation to the offence punishable u/Ss. 147, 148, 149, 302 and 294 of IPC.

It is submitted by the counsel for the applicant that the first bail application was dismissed as withdrawn by this Court vide order dated 10.06.2020 passed in M.Cr.C.No.14571/2020. It is submitted that the applicant is in custody since 07.05.2020. The investigation is over in the matter and the charge sheet has been filed. There is no further requirement of custodial interrogation of the present applicant. It is

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argued that as per the prosecution story, only allegation against the present applicant is that he was found standing at the place of incident armed with loaded gun but there is no allegation of firing of gun on the present applicant. The death has taken place by the injury inflicted by the co-accused Yagya Yadav who is said to have fired by a country made pistol. Even in the MLC, there is only one entry and exit wound and no other injuries is found on the body of the deceased which makes the prosecution story improbable owing to the fact that there is an allegation that the other co-accused has inflicted injuries by *Lathi* and *Danda* but in the M.L.C or the Post Mortem does not reflect any other injuries. It is submitted that he has tried to establish his plea of alibi by filing an application before the learned trial Court in pursuance to the directions given by the Hon'ble Court in M.Cr.C.No.43583/2019 vide order dated 11.11.2019 wherein the police authorities have investigated and found that the present applicant was present at the place of incident. But the fact remains that the only allegation as per the prosecution case is that he was present at the place of incident. The applicant is ready to abide by all the terms and conditions which may be imposed by this court while considering the application for grant of bail. The applicant has further shown his willingness to contribute an amount of Rs.10000/- towards the PM Care Fund. There is no possibility of his absconding or tampering with the prosecution case.

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Per contra, learned Panel Lawyer for the State has opposed the bail application stating that the presence of the applicant at the place of the incident is fairly reflected in the prosecution story but he fairly submits that there is no allegation of firing of gun by the present applicant. The death has taken place owing to gun shot injury caused by the co-accused Yagya Yadav. The factum of other co-accused Malkhan Singh being extended bail by this Court vide order dated 31.01.2020 passed in M.Cr.C.No. 4596/2020 is also not disputed by the State counsel but he submits that the applicant is having criminal history in another case in Crime No.76/2014 under the Gambling Act. He has prayed for dismissal of the application.

The Hon'ble Supreme by order dated 23.03.2020 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*

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*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.”*

Taking into consideration the overall facts and circumstances of

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the case and also the fact that there is no allegation of firing of gun shot against the present applicant. Merely his presence is shown by the prosecution at the place of the incident coupled with the present Covid-19 pandemic scenario as well as the fact that the investigation is over and the charge sheet has been filed and there is no further requirement of custodial interrogation of the present applicant, this Court deems it appropriate to allow this application.

Accordingly the application is allowed. The applicant is directed to be released on bail on furnishing his personal bonds in the sum of **Rs.50,000/- (Rs. Fifty Thousand Only) with one solvent surety** of the like amount to the satisfaction of the Investigation Officer/trial Court, as the case may be with submission of written undertaking and the applicant will abide by all terms and conditions of the different circulars, orders as well as guidelines issued by the Central Government, State Government as well as Local Administration for maintaining social distancing, hygiene etc to avoid Novel Corona Virus (COVID -19) pandemic and he will have to install **Arogya Setu App**, if not already installed.

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;

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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 him 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 seek unnecessary adjournments during the trial; and
6. The applicant will not leave India without previous permission of the trial Court/Investigating Officer, as the case may be.
7. **The applicant shall deposit Rs.10000/- in PM CARE Fund having Account Number : 2121PM20202, IFSC Code: SBIN0000691, SWIFT Code : SBININBB104, Name of Bank & Branch : State Bank of India, New Delhi Main Branch within seven days from today.**
8. The applicant will inform the concerned S.H.O. of concerned Police Station about his residential address in the said area and it would be the duty of the Panel Lawyer to send **E-copy** of this order to SHO of concerned police station as well as the concerned Superintendent of Police who shall inform the concerned SHO

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regarding the same.

Application stands allowed.

In view of the COVID-19, jail authorities are directed that before releasing the applicant, medical examination of applicant shall be undertaken by the jail doctor and on prima facie, if it is found that he is having the symptoms of COVID-19, then consequential follow up action including the isolation/quarantine or any test if required, be ensured, otherwise applicant shall be released immediately on bail and shall be given a pass or permit for movement to reach his place of residence.

**E-copy** of this order be provided to the applicant and E-copy of this order be sent to the trial Court concerned for compliance. It is made clear that E-copy of this order shall be treated as certified copy for practical purposes in respect of this order.

AK/-

**(Vishal Mishra)**  
**Judge**