

THE HIGH COURT OF MADHYA PRADESH**M.Cr.C. No.34523/2020***(Younis Mohammed Gauri Vs. State of M.P.)*

Gwalior, Dated:-25/09/2020

Shri V.K. Bharadwaj, learned Senior Counsel with Shri Rohit Batham, learned counsel for the applicant.

Shri Poonam Chandra Soni, learned Panel Lawyer for the respondent/State.

Matter is heard through video conferencing.

I.A. No.15487/2020, an application for urgent hearing, is taken up, considered and allowed for the reasons mentioned therein.

I.A. No.16424/2020, an application under Section 301(2) of Cr.P.C. filed on behalf of the complainant for assisting the State Counsel, is taken up, considered and allowed for the reasons mentioned therein.

Accordingly, Shri Devendra Choubey, learned counsel and his associates are permitted to assist the State Counsel.

The applicant has filed this first bail application u/S.439 Cr.P.C for grant of bail. Applicant has been arrested on 21/08/2020 by Police Station Porsa, Distt. Morena (M.P.) in connection with Crime No.561/2020 registered for offence under Sections 420, 294, 506 of IPC and Section 6(1) of M.P. Nikshepako Ke Hiton Ka Sanrakshan Adhinyam.

It is submitted by learned counsel for the applicant – **Younis Mohammed Gauri** that the applicant has not committed any offence. He has falsely been implicated in this case. Applicant is in custody

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since 21/08/2020. It is further submitted that present applicant, who is a retired Army Officer, joined the Company as Security Personnel. He is not the Director of that Company. The allegations leveled against the present applicant are baseless as the present applicant is also a victim of fraud committed by that Company. It is also submitted that provision of Section 6(1) of M.P. Nikshepako Ke Hiton Ka Sanrakshan Adhiniyam is not attracted against the present applicant. Learned counsel for the applicant relied upon the order dated 21/03/2018 passed by Co-ordinate Bench of this Court at Indore in **M.Cr.C. No. 5546/2019 (Mukesh Singh Vs. State of M.P.)**. Due to present COVID-19 pandemic, there is no possibility of commencement of trial in near future, as the working of trial Courts is adversely affected. Applicant is ready to abide by any condition which may be imposed by this Court. Hence, prays for grant of bail to the present applicant. 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 as well as learned counsel for the complainant have vehemently opposed the application and have submitted that offence is registered against the present applicant under Sections 420, 294, 506 of IPC and Section 6(1) of M.P. Nikshepako Ke

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Hiton Ka Sanrakshan Adhinyam, which is serious in nature. In the present case, lots of public money is involved and alleged offence has been committed against many persons who are labourer and innocent and also the residents of small villages. It is further submitted that in case of grant of bail, there is possibility of applicant's threatening the witnesses of this case. Hence, prayed to reject the bail application of the applicant.

Learned Senior Counsel for the applicant further submitted that Co-ordinate Bench of this Court vide order dated 02/12/2019 passed in **M.Cr.C. No.47061/2019 (Pramod Jain Vs. State of M.P.)** granted anticipatory bail to the ex-director of a similarly situated Company. Investigation and thereafter trial will take its own time. Hence, again learned counsel for the applicant prays for grant of bail.

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

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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.”

It is apparent from the case diary that the case is registered against the present applicant under Sections 420, 294, 506 of IPC and Section 6(1) of M.P. Nikshepako Ke Hiton Ka Sanrakshan Adhiniyam and the present applicant is not one of the Directors of the Company. Therefore, considering the facts and circumstances of the case, and custody period of the applicant, without commenting upon the merits

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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.2,00,000/- (Rupees Two Lakhs only)** with two solvent sureties each of **Rs.1,00,000/- (Rupees One Lakh only)** to the satisfaction of the Court concerned for his regular appearance before the trial Court concerned on the dates fixed it.

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

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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 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 an offence similar to the offence of which he is accused. In case of repetition of offence, this bail order shall automatically stand cancelled;**
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;
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; and
- 8. The applicant shall mark his presence before the concerned police station once in every month till conclusion of trial. On failure, this order shall automatically stand inoperative.**

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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

*Shubhankar**