

**HIGH COURT OF MADHYA PRADESH**  
**M.Cr.C. No.35538/2020**  
*(RAJEEV SHARMA Vs STATE OF MADHYA PRADESH)*

**Gwalior, dated: 07.10.2020**

Shri Vivek Kumar Mishra, Counsel for the applicant.

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

Heard finally through Video Conferencing.

Case diary is available.

This second application under Section 439 of Cr.P.C. has been filed for grant of bail.

The applicant has been arrested on 04.07.2020 in connection with Crime No.170/2020 registered by Police Station Lahar, District Bhind for offence under Section 379, 414 of IPC & Section 53 of Mines and Mineral Act.

Applicant's first bail application was rejected on merits vide order dated 04.08.2020 passed in M.Cr.C. No.24867/2020.

It is submitted by the counsel for the applicant that earlier in the month of July 2020, the applicant had filed an application before the trial Court for framing of charges but the said application was rejected by the trial Court in the light of the suspension of normal court functioning.

It is submitted that the applicant is an accused of an offence, which is triable by Magistrate and on one hand the trial Court is not proceeding with the trial and on the other hand, the High Court is not granting bail in an offence, which is triable by Magistrate, therefore,

where the applicant should go. It is further submitted that in the light of Section 437(6) of Cr.P.C. the trial must be concluded within a period of 60 days otherwise the applicant is entitled for bail.

*Per contra*, it is submitted by the counsel for the State that according to the prosecution case, the applicant is the driver of a tractor and trolley, which was transporting illegally excavated sand without any e-TP or payment of royalty and without any legal documents. Further the sand was excavated illegally from an area, which has not been sanctioned as sand quarry. It is further submitted that few years back, one tractor driver, who was involved in illegal transportation of illegally excavated sand, had killed one IPS Police Officer when he tried to stop the tractor. Similarly, on earlier occasion, an attempt was made to run over the tractor with an attention to kill a Revenue Officer. About 1 and 1/2 years back one Forest Officer was killed by tractor driver when he tried to stop the tractor, which was illegally transporting the illegally excavated sand.

Heard the learned Counsel for the parties.

So far as the contention of the applicant that the High Court is not granting bail in the cases, which are triable by Magistrate is concerned, this statement is purely contemptuous in nature. The activities of excavating sand in an illegal manner are increasing day by day. The Situation is very horrible and beyond control.

Due to illegal excavation of sand, the miscreants like applicant

are causing damage to the bed of the rivers thereby putting marine life as well as environment in danger. They are causing damage to the rivers beyond irreparable loss. Not only that, the applicant is also guilty of causing financial loss to the State by not making payment of royalty. Further more, while granting Sand Quarry Lease, the State Government always take into consideration as to whether the quarry lease can be granted in a particular area or not and what would be the maximum quantity of sand which can be excavated. As per Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rules,2019, several restrictions are provided and sand can be excavated after obtaining Environmental clearance, and Water and Air Consent. Furthermore, there are provisions with regard to the manner in which transportation of sand would take place. The applicant, by indulging in illegal transportation by illegally excavating the sand is not only causing irreparable loss to the humanity, environment and to the marine life but is also causing financial loss to the State. Under these circumstances, it cannot be said that the applicant is entitled to be released on bail merely because the offence alleged against him is triable by Magistrate.

It is incorrect on the part of the Counsel for the applicant to submit that since, the offence is triable by Magistrate, therefore, the High Court must grant bail by ignoring the gravity of offence. If an offence is non-bailable, then bail cannot be granted as a matter of

right and the Court is required to consider the allegations made against the accused.

So far as the contention of the applicant that in the light of the provisions of Section 437(6) of Cr.P.C., the applicant is entitled for bail as the Magistrate has failed to conclude the trial within a period of 60 days from the first date fixed for taking evidence is concerned, this Court is of the considered opinion that the provision of Section 437(6) of Cr.P.C. has no application to the facts of the case.

Section 437(6) of Cr.P.C. reads as under :-

“(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.”

Thus, the period of 60 days would start from the date, which would be fixed for the first time for taking evidence in the case. The trial has not reached to the stage of evidence. Further Section 437(6) of Cr.P.C is not absolute in itself. Even if the trial Court fails to decide the trial within a period of 60 days from the first date fixed for taking evidence, still he can reject the application by assigning special reasons. No indefeasible right is created in favour of the accused in case if the trial is not concluded within a period of 60 days from the first date of fixing the case for evidence.

So far as the contention of the counsel for the applicant that when the High Court does not grant bail in the Magisterial trial, then where the applicant should go is concerned, it is suffice to mention here that the order passed by this Court is subject to further challenge before the Supreme Court. Although the manner in which the above mentioned submission was made by the Counsel for the applicant was not as per the decorum, but considering his young age, this Court doesnot wish to proceed further in the matter with a hope and belief that good sense would prevail.

Accordingly, application fails and is hereby **dismissed**.

**(G.S. Ahluwalia)**  
**Judge**