

**THE HIGH COURT OF MADHYA PRADESH**  
**MCRC No.36644/2021**  
**(DEEPU KUSHWAHA VS. STATE OF M.P.)**

**Through Video Conferencing**

**Gwalior, Dated : 05/08/2021**

Ms. Sangeeta Pachori, Counsel for the applicant.

Shri C.P.Singh, Counsel for the State.

Case diary is available.

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

The applicant has been arrested on 27/01/2021 in connection with Crime No.21/2021 registered at Police Station Ron, District Bhind for offence under Sections 379, 414 of IPC and Sections 3, 181, 5, 180, 146, 177 and 77 of Motoryan Adhiniyam, 1988.

It is submitted by the counsel for the applicant that according to the prosecution case, the applicant was transporting illegally excavated sand in an illegal manner. The applicant is in jail from 27/01/2021 and has completed more than six months of his incarceration and the previous bail application of the applicant was dismissed as withdrawn with liberty to revive the prayer after completing six months' of detention by order dated 07/06/2021 passed in MCRC No.23649/2021. The applicant was never released on temporary parole in the wake of Covid-19 pandemic. The Trial is likely to take sufficiently long time and there is no possibility of his

absconding or tempering with prosecution witnesses.

*Per contra*, the application is vehemently opposed by the Counsel for the State. However, it is submitted that as per the police case diary, the applicant has no criminal antecedents.

Considered the submissions made by the Counsel for the parties through video conferencing.

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 Powered 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 undertrial 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.”

Considering the period of detention, as well as considering the fact that in view of second wave of Covid19 pandemic, it is also necessary to decongest the jail, and without commenting on the merits of the case, it is directed that the applicant be released on bail, on furnishing a personal bond in the sum of **Rs.1,00,000 (Rs. One Lac)** with one surety in the like amount to the satisfaction of the Trial Court or C.J.M. or Remand Magistrate (Whosoever is available). The applicant shall also furnish an undertaking that he shall follow all the instructions which may be issued by the Central Govt./State Govt. or Local Administration (General or Specific) from time to time for combating Covid19.

The Supreme Court in the case of **IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS** by order dated **7-4-2020** has directed as under :

In these circumstances, we consider it appropriate to direct that Union of India shall ensure that all the prisoners having been released by the States/Union Territories are not left stranded and they are provided transportation to reach their homes or given the option to stay in temporary shelter homes for the period of lockdown.

For this purpose, the Union of India may issue appropriate directions under the Disaster Management Act, 2005 or any other law for the time being in force. We further direct that the States/Union Territories shall ensure through Directors General of Police to provide safe transit to the prisoners who have been released so that they may reach their homes. They shall also be given an option for staying in temporary shelter homes during the period of lockdown.

Accordingly, it is directed that before releasing the applicant, the jail authorities shall get the applicant examined by a competent Doctor and if the Doctor is of the opinion that his Corona Virus test is necessary, then the same shall be conducted. If the applicant is not found suspected of Covid19 infection or if his test report is negative, then the concerned local administration shall make necessary arrangements for sending the applicant to his house as per the directions issued by the Supreme Court in the case of IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS (Supra) , and if he is found positive then the applicant shall be immediately sent to concerning hospital for his treatment as per medical norms. 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 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. The applicant is further directed to supply a copy of this bail order to the police station having jurisdiction over his place of residence.**

The other conditions of Section 437,439 Cr.P.C. shall remain the same.

**Before releasing the applicant on bail, the Court below shall verify as to whether the applicant was ever released on temporary parole in the wake of Covid-19 pandemic or not. If it is found that the applicant was released on temporary parole, then this order shall automatically come to an end and the Court below shall not be obliged to release the applicant on bail.**

This order shall remain in force, till the conclusion of Trial. In case of bail jump, or violation of any of the condition(s) mentioned above, this order shall automatically lose its effect.

In the light of the judgment passed by the Supreme Court in the case of **Aparna Bhat & Ors. vs. State of M.P.** passed on **18/3/2021 in Criminal Appeal No. 329/2021**, the intimation regarding grant of bail be sent to the complainant.

With aforesaid observations, this application is **Allowed**.

C.C. As per rules.

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