

1 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.42840/2021
Manoj Vishwakarma Vs. State of M.P.

Gwalior, Dated:08/09/2021

Shri Brajmohan Mahajan, Advocate for applicant.

Smt. Padamshri Agrawal, Panel Lawyer for State.

This fourth application under Section 439 of Cr.P.C. has been filed for grant of bail. The third application was dismissed as withdrawn by order dated 2/11/2020 passed in M.Cr.C. No.41498/2020.

2. The applicant has been arrested on 27/11/2017 in connection with Crime No.418/2017 registered at Police Station Kotwali, District Datia for offence under Sections 302, 307 of IPC.

3. It is submitted by the counsel for the applicant that the basic law is that while deciding the bail application the Court must respect to the life and liberty guaranteed by Article 21 of the Constitution of India. Although the bail application of the applicant has already been rejected thrice on earlier occasion, but he should be permitted to argue the matter on merits. Further the witnesses have been examined and there are material omissions and contradictions in their evidence and under these circumstances, the applicant is entitled for bail.

4. *Per contra*, the application is vehemently opposed by the counsel for the State. It is submitted that the previous bail application have already been withdrawn. The allegations against the applicant is that on 11/10/2017 at about 2-24 AM the mother of the complainant

2 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.42840/2021
Manoj Vishwakarma Vs. State of M.P.

raised an alarm by alleging that the applicant has assaulted her by an axe, as a result, all the inmates woke up and found that the applicant was running away from the house alongwith an axe. The mother of the complainant was having incised wound on her leg, whereas the father of the complainant was having an incised wound on his neck. The father of the complainant, namely, Rajendra had expired, whereas the mother of the complainant was alive and she also stated that the applicant had assaulted her by means of an axe. It is submitted that the mother of the complainant expired at a later stage. The statement of the mother of the complainant, namely, Urmila was also recorded under Section 161 of Cr.P.C., however, subsequently she expired on account of injury sustained by her, therefore, the said statement can be treated as a dying declaration.

5. Heard the learned counsel for the parties.

6. The counsel for the applicant in a very derogatory manner had argued that the basic law is that by rejecting the bail application, the fundamental life and liberty guaranteed under Article 21 of the Constitution of India should not be violated. He further submitted that the bail application should be decided by keeping analogy in mind that unless and until the person is convicted, he is an innocent person. Accordingly, the counsel for the applicant was directed to develop his arguments and to submit as to whether rejection of bail

3 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.42840/2021
Manoj Vishwakarma Vs. State of M.P.

application of an under trial would be violative of Article 21 of the Constitution of India or not.

7. It is submitted by Shri Brajmohan Mahajan that although he has a read in this regard but he has not brought the judgments.

8. On 2.9.2021, the case was argued by Shri Brajmohan Mahajan for more than 45 minutes. In the bail application, itself it has been mentioned as under:

मैं अधिवक्ता, जूनियर अधिवक्ता हूँ और यह जमानत आवेदन मुझ अधिवक्ता के व्यावसायिक जीवन का पहिला जमानत आवेदन पत्र है, इसलिये इस आवेदन पत्र के लेखन/ड्राफ्टिंग में कोई त्रुटि हो तो माननीय न्यायाधीश महोदय से विनम्र निवेदन है कि इस त्रुटि को क्षमा करें, और उपरोक्त तथ्यों एवं आधारों के प्रकाश में निम्नांकित अनुतोष प्रदान करने की कृपा करें:-

9. Since the applicant had given a declaration that it is his first bail application which he is arguing, therefore, on 2.9.2021, this Court after hearing the applicant at length again granted time to him to prepare the case specifically in the light of the judgment passed by the Supreme Court in the case of **Satish Jaggi vs. State of Chhatisgarh** reported in **(2007) 11 SCC 195**.

10. Today, when it was found that the applicant has not brought any judgment and is making general statements, then he was asked that when time was granted to him to make preparation, then why he has not done so. In reply, it was submitted by Shri Mahajan that he did not get time because he was busy in other matters not related to

4 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.42840/2021
Manoj Vishwakarma Vs. State of M.P.

advocacy.

11. Be that whatever it may.

12. The Supreme Court in the case of **Lily Thomas and Others Vs. Union of India and others** reported in **(2000) 6 SCC 224** has held as under:-

61. The alleged violation of Article 21 is misconceived. What is guaranteed under Article 21 is that no person shall be deprived of his life and personal liberty except according to the procedure established by law. It is conceded before us that actually and factually none of the petitioners has been deprived of any right of his life and personal liberty so far. The aggrieved persons are apprehended to be prosecuted for the commission of offence punishable under Section 494 IPC. It is premature, at this stage, to canvass that they would be deprived of their life and liberty without following the procedure established by law. The procedure established by law, as mentioned in Article 21 of the Constitution, means the law prescribed by the legislature. The judgment in *Sarla Mudgal case* [*Sarla Mudgal, President, Kalyani v. Union of India*, (1995) 3 SCC 635 : 1995 SCC (Cri) 569] has neither changed the procedure nor created any law for the prosecution of the persons sought to be proceeded against for the alleged commission of the offence under Section 494 IPC.

The Supreme Court in the case of **Sudha Singh vs. State of U.P. and another** reported in **(2021) 4 SCC 781** has held as under:

10. In *Prasanta Kumar Sarkar v. Ashis Chatterjee* [*Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765], it was held that this Court ordinarily would not interfere with a High Court's order granting or rejecting bail to an accused. Nonetheless, it was equally imperative for the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with

5 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.42840/2021
Manoj Vishwakarma Vs. State of M.P.

the ratio set by a catena of decisions of this Court. The factors laid down in the judgment were:

- (i) Whether there was a prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of accusations;
- (iii) severity of the punishment in the event of a conviction;
- (iv) danger of the accused absconding or fleeing, if granted bail;
- (v) *character, behaviour, means, position and standing of the accused;*
- (vi) *likelihood of repetition of the offence;*
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger of justice being thwarted by grant of bail.

The Supreme Court in the case of **Harjit Singh vs. Inderjeet Singh @ Inder and another** by order dated 24/8/2021 passed in CRA No.883/2021 has held as under:

7. We have heard the learned counsel for the respective parties at length.

Before considering the rival submissions on behalf of the respective parties, few decisions of this Court on how to exercise the discretionary power for grant of bail and the duty of the appellate court, particularly when bail was refused by the court(s) below and the principles and considerations for granting or refusing the bail are required to be referred to and considered.

7.1 In the case of *Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P., (1978) 1 SCC 240*, this Court has observed and held that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. The nature of the charge is a vital factor and the nature of the evidence is also pertinent. The severity of the punishment to which the accused may be liable if convicted also bears upon the issue. Another relevant factor is whether the course

6 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.42840/2021
Manoj Vishwakarma Vs. State of M.P.

of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being. The Court has also to consider the likelihood of the applicant interfering with the witnesses for the prosecution or otherwise polluting the process of justice. It is further observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

7.2 In the case of *Ash Mohammad v. Shiv Raj Singh*, (2012) 9 SCC 446, this Court in paragraphs 17 to 19 observed and held as under:

“17. We are absolutely conscious that liberty of a person should not be lightly dealt with, for deprivation of liberty of a person has immense impact on the mind of a person. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of vacuum. Needless to emphasise, the sacrosanctity of liberty is paramount in a civilised society. However, in a democratic body polity which is wedded to the rule of law an individual is expected to grow within the social restrictions sanctioned by law. The individual liberty is restricted by larger social interest and its deprivation must have due sanction of law. In an orderly society an individual is expected to live with dignity having respect for law and also giving due respect to others' rights. It is a well-accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice, its desire for peace and harmony and its necessity for security cannot be allowed to be trivialised. The life of an individual living in a society governed by the rule of law has to be regulated and such regulations which are the source in law subserve the social balance and function as a significant instrument for protection of human rights and security of the collective. It is because fundamentally laws are made for their obedience so that every member of the society lives peacefully in a society to achieve his individual

7 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.42840/2021
Manoj Vishwakarma Vs. State of M.P.

as well as social interest. That is why Edmond Burke while discussing about liberty opined, “it is regulated freedom”.

18. It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society. The prospect of greater justice requires that law and order should prevail in a civilised milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes do not become epidemic. In an organised society the concept of liberty basically requires citizens to be responsible and not to disturb the tranquillity and safety which every well-meaning person desires. Not for nothing J. Oerter stated:

“Personal liberty is the right to act without interference within the limits of the law.”

19. Thus analysed, it is clear that though liberty is a greatly cherished value in the life of an individual, it is a controlled and restricted one and no element in the society can act in a manner by consequence of which the life or liberty of others is jeopardised, for the rational collective does not countenance an anti-social or anti-collective act.”

7.3 In the case of *State of Maharashtra v. Sitaram Popat Vetal*, (2004) 7 SCC 521, it is observed and held by this Court that while granting of bail, the following factors among other circumstances are required to be considered by the Court:

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;
2. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and

8 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.42840/2021
Manoj Vishwakarma Vs. State of M.P.

3. Prima facie satisfaction of the court in support of the charge.

It is further observed that any order *dehors* such reasons suffers from non-application of mind.

7.4 In the case of *Mahipal v. Rajesh Kumar (2020) 2 SCC 118*, where the High Court released the accused on bail in a case for the offence under Section 302 of the IPC and other offences recording the only contention put forth by the counsel for the accused and further recording that “taking into account the facts and circumstances of the case and without expressing the opinion on merits of case, this Court deems fit just and proper to enlarge/release the accused on bail”, while setting aside the order passed by the High Court granting bail, one of us (Dr. Justice D.Y. Chandrachud) observed in paragraphs 11 and 12 as under:

“11. Essentially, this Court is required to analyse whether there was a valid exercise of the power conferred by Section 439 CrPC to grant bail. The power to grant bail under Section 439 is of a wide amplitude. But it is well settled that though the grant of bail involves the exercise of the discretionary power of the court, it has to be exercised in a judicious manner and not as a matter of course. In *Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598*, Umesh Banerjee, J. speaking for a two-Judge Bench of this Court, laid down the factors that must guide the exercise of the power to grant bail in the following terms:

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. ... The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent

9 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.42840/2021
Manoj Vishwakarma Vs. State of M.P.

on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or

**10 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.42840/2021
Manoj Vishwakarma Vs. State of M.P.**

reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.

7.5 That thereafter this Court considered the principles that guide while assessing the correctness of an order passed by the High Court granting bail. This Court specifically observed and held that normally this Court does not interfere with an order passed by the High Court granting or rejecting the bail to the accused. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. This Court further observed that the power of the appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for cancellation of bail. It is further observed that the correctness of an order granting bail is tested on the anvil of whether there was a proper or arbitrary exercise of the discretion in the grant of bail. It is further observed that the test is whether the order granting bail is perverse, illegal or unjustified. Thereafter this Court considered the difference and distinction between an application for cancellation of bail and an appeal before this Court challenging the order passed by the appellate court granting bail in paras 13, 14, 16 and 17 as under:

“13. The principles that guide this Court in assessing the correctness of an order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] passed by the High Court granting bail were succinctly laid down by this Court in Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496. In that case, the accused was facing trial for an offence punishable under Section 302 of the Penal Code. Several bail applications filed by the accused were dismissed by the Additional Chief Judicial

11 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.42840/2021
Manoj Vishwakarma Vs. State of M.P.

Magistrate. The High Court in turn allowed the bail application filed by the accused. Setting aside the order [Ashish Chatterjee State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] of the High Court, D.K. Jain, J., speaking for a two-Judge Bench of this Court, held:

“9. ... It is trite that this Court does not, normally, interfere with an order [Ashish Chatterjee v. State of W.B., CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of nonapplication of mind, rendering it to be illegal.”

14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has

12 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.42840/2021
Manoj Vishwakarma Vs. State of M.P.

been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding.

16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. In *Neeru Yadav v. State of U.P.*(2014) 16 SCC 508, the accused was granted bail by the High Court [*Mitthan Yadav v. State of U.P.*[2014 SCC OnLine All 16031]]. In an appeal against the order

**13 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.42840/2021
Manoj Vishwakarma Vs. State of M.P.**

[Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031] of the High Court, a two-Judge Bench of this Court surveyed the precedent on the principles that guide the grant of bail. Dipak Misra, J. held:

“12. ... It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court.”

17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment. The order [Rajesh Kumar v. State of Rajasthan, 2019 SCC OnLine Raj 5197] of the High Court in the present case, insofar as it is relevant reads:

“2. Counsel for the petitioner submits that the

14 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.42840/2021
Manoj Vishwakarma Vs. State of M.P.

petitioner has been falsely implicated in this matter. Counsel further submits that, the deceased was driving his motorcycle, which got slipped on a sharp turn, due to which he received injuries on various parts of body including ante-mortem head injuries on account of which he died. Counsel further submits that the challan has already been presented in the court and conclusion of trial may take long time.

3. The learned Public Prosecutor and counsel for the complainant have opposed the bail application.

4. Considering the contentions put forth by the counsel for the petitioner and taking into account the facts and circumstances of the case and without expressing opinion on the merits of the case, this Court deems it just and proper to enlarge the petitioner on bail.” Thereafter this Court set aside the order passed by the High Court releasing the accused on bail.”

Thereafter, this Court set aside the order passed by the High Court releasing the accused on bail.

8. At this stage, a recent decision of this Court in the case of Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana (koli) 2021 (6) SCALE 41 is also required to be referred to. In the said decision, this Court considered in great detail the considerations which govern the grant of bail, after referring to the decisions of this Court in the case of Ram Govind Upadhyay (Supra); Prasanta Kumar Sarkar (Supra); Chaman Lal vs. State of U.P. (2004) 7 SCC 525; and the decision of this Court in Sonu vs. Sonu Yadav 2021 SCC Online SC 286. After considering the law laid down by this Court on grant of bail, in the aforesaid decisions, in paragraphs 20, 21, 36 & 37 it is observed and held as under:

“20. The first aspect of the case which stares in the face is the singular absence in the judgment of the High Court to the nature and gravity of the crime. The incident which took place on 9 May 2020 resulted in five homicidal deaths. The nature of the offence is a circumstance which has an important bearing on the grant of bail. The orders of the High Court are conspicuous in the

15 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.42840/2021
Manoj Vishwakarma Vs. State of M.P.

absence of any awareness or elaboration of the serious nature of the offence. The perversity lies in the failure of the High Court to consider an important circumstance which has a bearing on whether bail should be granted. In the two-judge Bench decision of this Court in Ram Govind Upadhyay v. Sudharshan Singh, the nature of the crime was recorded as “one of the basic considerations” which has a bearing on the grant or denial of bail. The considerations which govern the grant of bail were elucidated in the judgment of this Court without attaching an exhaustive nature or character to them. This emerges from the following extract:

“4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

21. This Court further laid down the standard for overturning an order granting bail in the

**16 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.42840/2021
Manoj Vishwakarma Vs. State of M.P.**

following terms:

“3. Grant of bail though being a discretionary order -- but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained.”

xxx xxx xxx

36. Grant of bail under Section 439 of the CrPC is a matter involving the exercise of judicial discretion. Judicial discretion in granting or refusing bail - as in the case of any other discretion which is vested in a court as a judicial institution - is not unstructured. The duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court is exercised in a judicious manner. The recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice. This Court in *Chaman Lal v. State of U.P* (2004) 7 SCC 525 in a similar vein has held that an order of a High Court which does not contain reasons for prima facie concluding that a bail should be granted is liable to be set aside for nonapplication of mind. This Court observed:

“8. Even on a cursory perusal the High Court's order shows complete non-application of mind. Though detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the Court while passing orders on bail applications. Yet a court dealing with the bail application should be satisfied, as to whether there is a prima facie case, but exhaustive exploration of the merits of the case is not necessary. The court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course.

9. There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence...”

**17 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.42840/2021
Manoj Vishwakarma Vs. State of M.P.**

37. We are also constrained to record our disapproval of the manner in which the application for bail of Vishan (A-6) was disposed of. The High Court sought to support its decision to grant bail by stating that it had perused the material on record and was granting bail “without discussing the evidence in detail” taking into consideration:

- (1) The facts of the case;
- (2) The nature of allegations;
- (3) Gravity of offences; and
- (4) Role attributed to the accused.”

The Supreme Court in the case of **Virupakshappa Gouda and another Vs. State of Karnataka and another** reported in (2017) 5 SCC 406 has held as under:-

15. The court has to keep in mind what has been stated in *Chaman Lal v. State of U.P.* [*Chaman Lal v. State of U.P.*, (2004) 7 SCC 525 : 2004 SCC (Cri) 1974] The requisite factors are : (i) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; (ii) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (iii) prima facie satisfaction of the court in support of the charge. In *Prasanta Kumar Sarkar v. Ashis Chatterjee* [*Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] , it has been opined that while exercising the power for grant of bail, the court has to keep in mind certain circumstances and factors. We may usefully reproduce the said passage : (SCC p. 499, para 9)

“9. ... among other circumstances, the factors which are to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;

18 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.42840/2021
Manoj Vishwakarma Vs. State of M.P.

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.”

16. In *CBI v. V. Vijay Sai Reddy* [*CBI v. V. Vijay Sai Reddy*, (2013) 7 SCC 452 : (2013) 3 SCC (Cri) 563], the Court had reiterated the principle by observing thus : (SCC p. 465, para 34)

“34. While granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words “*reasonable grounds for believing*” instead of “*the evidence*” which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

(emphasis in original)

17. From the aforesaid principles, it is quite clear that an order of bail cannot be granted in an arbitrary or fanciful manner. In this context, we may, with profit, reproduce a passage from *Neeru Yadav v. State of U.P.* [*Neeru Yadav v. State of U.P.*, (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527], wherein the Court setting

19 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.42840/2021
Manoj Vishwakarma Vs. State of M.P.

aside an order granting bail observed : (SCC pp. 514-15, para 16)

“16. The issue that is presented before us is whether this Court can annul the order passed [*Mitthan Yadav v. State of U.P.*, 2014 SCC OnLine All 16031] by the High Court and curtail the liberty of the second respondent? We are not oblivious of the fact that the liberty is a priceless treasure for a human being. It is founded on the bedrock of the constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilised society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilised. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. [The] society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its

20 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.42840/2021
Manoj Vishwakarma Vs. State of M.P.

own whim or caprice. It has to be guided by the established parameters of law.”

18. In this context what has been stated by a three-Judge Bench in *Dinesh M.N. v. State of Gujarat* [*Dinesh M.N. v. State of Gujarat*, (2008) 5 SCC 66 : (2008) 2 SCC (Cri) 508] is quite instructive. In the said case, the Court has held that where the Court admits the accused to bail by taking into consideration irrelevant materials and keeping out of consideration the relevant materials the order becomes vulnerable and such vulnerability warrants annulment of the order.

19. In the instant case, as is demonstrable, the learned trial Judge has not been guided by the established parameters for grant of bail. He has not kept himself alive to the fact that twice the bail applications had been rejected and the matter had travelled to this Court. Once this Court has declined to enlarge the appellants on bail, endeavours to project same factual score should not have been allowed. It is absolute impropriety and that impropriety calls for axing of the order.

13. Thus it is clear that while considering the bail application apart from other conditions, the gravity of offence should also be taken into consideration. Thus it is incorrect on the part of the counsel for the applicant that irrespective of the gravity of offence, this Court must grant bail to the accused merely because Article 11 of the Constitution of India guarantees him the right of life and liberty.

14. The applicant was asked as to whether he has challenged column No.5 of Schedule 1 of Cr.P.C. by which the offence under Section 302 of IPC has been made non-bailable and whether he has challenged the legality of Section 436-A of Cr.P.C. or not, then he fairly conceded that he has not challenged the same. Once any

21 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.42840/2021
Manoj Vishwakarma Vs. State of M.P.

offence has been made non-bailable and as per provision of Section 436-A of Cr.P.C., an under trial cannot be kept in jail beyond half of the maximum sentence provided for an offence for which he is facing trial coupled with the fact that Article 21 of the Constitution of India is subjected to reasonable restrictions then the accused who is facing charge for killing two persons cannot claim that irrespective of the allegations against him he should be granted bail.

15. Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that no case is made out for grant of bail. The application fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge

Arun*