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THE HIGH COURT OF MADHYA PRADESH
MCRC No.44900/2021
Vicky @ Dilshad & Anr. vs. State of M.P.

Gwalior, Dated : 13.09.2021

Shri Brijendra Singh, Counsel for the applicants.

Shri C.P. Singh, Panel Lawyer for the respondent/State.

Case diary is available.

This second application under Section 439 of Cr.P.C. has been filed for grant of bail. The first application was dismissed by order dated 30.4.2021 passed in M.Cr.C.No.20285/2021.

The applicants have been arrested on 19.1.2021 in connection with Crime No.5/41 registered at Police Station Forest Department Raghogarh, District Guna for offence under Sections 2(16), 2(32), 09, 39(1)(B), 39(3)(B), 40(2), 44(1)(A) and 51(1) of the Wild Life Protection Act, 1972.

It is submitted by the counsel for the applicants that according to the prosecution case, carcass of three blackbucks and one rabbit were seized from the possession of the applicants. The applicants are in jail from 19.1.2021. In view of the allegations that apart from the seizure of carcass of three blackbucks and one rabbit, the applicants had also opened fire on the forest party, the applicants are ready and willing to abide by any stringent condition which may be imposed by this Court including that of furnishing cash surety. The trial is likely to take sufficiently long time and there is no possibility of

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their absconding or tempering with prosecution witnesses.

Per contra, the application is vehemently opposed by the Counsel for the State. It is submitted by the counsel for the State that apart from the present case, one more offence under Sections 323, 336, 353 read with Section 34 of IPC have been registered against the applicant.

Considered the submissions made by the Counsel for the parties.

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

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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 allegations, 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 applicants be released on bail, on furnishing cash surety of **Rs. 1,00,000 (Rs. One Lac)** each to the satisfaction of the Trial Court or C.J.M. or Remand Magistrate (Whosoever is available). The applicants shall also furnish an undertaking that they 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

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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 applicants, the jail authorities shall get the applicants examined by a competent Doctor and if the Doctor is of the opinion that their Corona Virus test is necessary, then the same shall be conducted. If the applicants are not found suspected of Covid19 infection or if their test report is negative, then the concerned local administration shall make necessary arrangements for sending the applicant to their 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 they are found positive then the applicants shall be immediately sent to concerning hospital for their treatment as per medical norms.

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The applicants are 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 applicants have 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 them in custody and would send them to the same jail from where they were released. The applicants are further directed to supply a copy of this bail order to the police station having jurisdiction over their place of residence.

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

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.

It is made clear that single default in appearance before the Trial Court, or in case of registration of new offence, this bail order shall automatically come to an end and the cash surety so furnished by the applicants shall automatically stand forfeited without any reference to the Court.

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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**.

(alok)

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