

The High Court of Madhya Pradesh

Misc. Cri. Case No. 64329/2021

(Mukesh vs. State of MP)

Gwalior dated 24.01.2022

Heard through Video Conferencing.

Shri R.K.Dwivedi, learned counsel for the applicant.

Shri Rajesh Shukla, learned Deputy Advocate General, for the State.

This is **first** bail application under Section 439 Cr.P.C. filed on behalf of the applicant. The applicant is in custody since 24.10.2021 in connection with Crime No.147/2021 registered at P.S. Veerpur, District Sheopur (M.P.) for the offence punishable under Section 34(2) of Excise Act.

As per story of the prosecution, two vehicles bearing registration No. MP06-GA-3542 and MP06-GA-3416 were found loaded with liquor, total quantified as 933.12 bulk litres (466.56 bulk litres from each vehicle). Accused persons, namely, Dilip and Chandrabhan were drivers and present applicant-Mukesh and Udaibhan were cleaner. On further investigation, name of co-accused Madanlal has been disclosed by co-accused Dilip as source of liquor. Accordingly, the case has been registered.

Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the offence. Investigation is complete and he is no more required for custodial investigation. The applicant is a cleaner. He has no criminal antecedents. He has already suffered jail incarceration since 24.10.2021. Looking to the Covid-19 (3rd wave) situation, trial is not likely to conclude early in the near future. Under such circumstances, the prayer for grant of bail may be considered on such terms and conditions as this Court deems fit and proper.

Per contra, learned Deputy Advocate General opposes the bail application supporting the order impugned with submissions that the applicant was working as cleaner in the offending vehicles, therefore, the complicity of applicant cannot be ruled out and no exception can be taken in enlargement of the applicant on bail. However, he does not dispute that there are no criminal antecedents against the applicant.

Upon hearing learned counsel for the parties, but without commenting anything upon rival contentions touching the merits of the case, regard being had to the fact that the applicant is in custody since 24.10..2021, he is not required for custodial investigation, he has no criminal antecedents, the alleged offence is triable by Magistrate, hence in the obtaining facts and circumstances the present applicant is held entitled for enlargement on bail but with stringent conditions.

Consequently, the application of the applicant filed under Section 439 of the Criminal Procedure Code, 1973, is hereby allowed. It is directed that the applicant be released on bail on furnishing personal bond in the sum of **Rs.1,00,000/- (Rupees One Lac only)** with one solvent surety in the like amount to the satisfaction of the learned Trial Court and on the condition that he shall remain present before the Court concerned during trial and also comply with the conditions enumerated under Section 437 (3) of Criminal Procedure Code, 1973 with following further conditions:

- (i) **the applicant shall mark his attendance before the concerned police station on every 4th Saturday of the month between 10:00 a.m. to 12:00 noon;**
- (ii) the applicant shall abide by the terms and conditions of various circulars and orders issued by the Government of India and the State Government as well as the local administration from time-to-time in the matter of maintaining social distancing, physical distancing, hygiene, etc., to avoid proliferation of Novel Corona

virus (COVID-19);

(iii) the concerned jail authorities are directed that before releasing the applicant, the medical examination of the applicant be conducted through the jail doctor and if it is *prima facie* found that he is having any symptoms of COVID-19, then the consequential follow up action or any further test required, be undertaken immediately. If not, the applicant shall be released on bail in terms of the conditions imposed in this order;

(iv) on violation of conditions, State is free to apply for cancellation of bail;

(v) in future, if the applicant is found to be involved in such nature of cases or any other similar criminal cases or misuse the bail granted by this Court, this bail order shall stand cancelled automatically.

Learned Public Prosecutor is directed to send an e-copy of this order to all the concerned including the concerned Station House Officer of the Police Station for information and necessary action.

E-certified copy as per rules.

(yog)

(Rohit Arya)
Judge