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THE HIGH COURT OF MADHYA PRADESH
MCRC-10876-2022
Yogesh Gahlot Vs. State of MP

Gwalior, Dated : 08.03.2022

Shri Manish Sharma, Counsel for the applicant.

Shri P.P.S. Bajeeta, Counsel for the State.

Case diary is available.

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 The third application was dismissed as withdrawn by order dated 9/2/2022 passed in M.Cr.C. No.6120/2022.

The applicant has been arrested on 24/11/2021 in connection with Crime No.597/2021 registered at Police Station Thatipur, District Gwalior for offence under Sections 366, 343, 376(2)(N), 323, 506, 34, 376-D of IPC.

It is an unfortunate case where the counsel for the applicant has played fraud on the Court by suppressing material facts from stage to stage. When the counsel for the applicant was asked as to why on the first occasion he did not bring the fact of dismissal of petition filed by the applicant in the nature of habeas corpus, then it was submitted by Shri Sharma that since he was not relying on the said order, therefore, he did not think it proper to bring it to the notice of the Court. It was also submitted by Shri Sharma that in case if all the documents are filed, then again they create difficulty and in case if the documents are not filed, then again they create difficulty, therefore, he did not file the documents. He further stated that he

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should be heard on merits.

Although the previous bail application of the applicant has already been dismissed on merits, but since the counsel for the applicant was insisting that he should be heard on merits, therefore, he was allowed to do so.

It is submitted that in fact, the applicant had married the prosecutrix and since she was in illegal confinement of her parents, therefore, the applicant had made certain complaints to the police authorities and to substantiate his submission, counsel for the applicant has also referred to certain complaints made by him complaining illegal confinement by the parents of the prosecutrix.

However, it is not out of place to mention here that initially the applicant had also filed a writ petition in the nature of habeas corpus which was registered as W.P. No.16082/2021 and in the said writ petition, the prosecutrix/corpus had appeared before the coordinate Bench of this Court on 20.09.2021 and made a statement that she is not in illegal confinement of her father and her signatures were obtained on certain papers without her consent. Thereafter, it was found that Ms. Ankita Bhargav, Sub-Inspector, Police Station Thatipur had also made false statement before this Court and certain directions were given to the Superintendent of Police, Gwalior by order dated 27.09.2021 passed in W.P. No.16082/2021 and when the

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counsel for the applicant was directed to argue on his writ petition filed in the nature of habeas corpus, then it was withdrawn. Since all the complaints with regard to illegal confinement were made prior to withdrawal of the writ petition, therefore, counsel for the applicant was asked to point out as to whether he can re-agitate the question of illegal confinement in the bail application or not, because he had not pressed the said ground in a writ petition in which the subject matter was whether she was in illegal confinement of her father or not. Surprisingly, counsel for the applicant submitted that he can re-agitate the grounds as and when he wishes. Accordingly, when this Court was left with no other option, then the counsel for the applicant was directed to read out Section 11 of Cr.P.C. and make a submission as to whether a party to the litigation can be permitted to re-agitate the grounds again and again and whether the provisions of *res judicata* are applicable to the criminal proceedings or not. After going through the provisions of law, it was fairly conceded by Shri Sharma that he cannot re-agitate the question of illegal confinement in view of the withdrawal of W.P. No.16082/2021.

It is also not out of place to mention there that when an application for grant of anticipatory bail was filed by the applicant, certain more facts were considered and by a detailed order dated 17.11.2021 passed in M.Cr.C. No.54837/2021, application filed by

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the applicant for grant of anticipatory bail was rejected.

During the course of arguments, counsel for the applicant again wanted to submit that the prosecutrix has married the applicant, then attention of the counsel for the applicant was drawn towards the order passed by this Court in M.Cr.C. No.54837/2021, then it was fairly conceded by Shri Sharma that he has not filed copy of the said order in the present application, although he has disclosed the details of the said bail application in the format. However, again Shri Sharma could not explain as to why he has continued with his habit of suppressing the material facts because while deciding the application for grant of anticipatory bail, this Court had taken note of the order dated 9.12.2020 passed by this Court in W.P. No.762/2020 (Shalu Sharma Vs. State of M.P.) in which it was held that Mool Shankar Arya Samaj Vaidik Sanstha, Pawan Sut Colony, Hurawali, Gwalior is not competent to perform marriages and Mool Shankar Arya Samaj Vaidik Sanstha was restrained from performing the marriages and it was also observed that in case, if any marriage is performed, then it will be invalid and the so called documents of marriage filed by applicant were subsequent in time. At the relevant time, there was no stay order on the direction given by this Court in case of **Shalu Sharma (supra)**. However, later on, Writ Appeal No.95/2021 filed by Aary Mool Shankar Samaj Samiti has also been

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dismissed by order dated 17/12/2021.

Be that whatever it may.

Since the behaviour of Shri Manish Sharma was not good and in spite of the fact that at every stage, he was found guilty of suppressing the material facts, therefore, this Court was inclined to issue contempt notice to him as well as to refer the matter to the Bar Council of Madhya Pradesh. However, when this Court expressed its inclination to issue contempt notice and having failed in explaining his conduct of suppressing material facts, Shri Manish Sharma at last realized his mistake and tendered his unconditional apology and, accordingly, he has filed written unconditional apology, which reads as under:-

“प्रति

माननीय उच्च न्यायालय
खण्डपीठ ग्वालियर
म0प्र0

विषय : प्रार्थी द्वारा वर्तमान व पूर्व की याचिकाओं में माननीय न्यायालय के समक्ष भूलवश जो तथ्य प्रकट नहीं किये गये एवं वर्तमान वहस के दौरान प्रार्थी के व्यवहार हेतु क्षमा प्रार्थना।
MCRC No.10876 / 22

माननीय न्यायालय

प्रार्थी माननीय न्यायालय के समक्ष योगेश गहलोट vs म0प्र0 शासन की याचिकाओं में आरोपी तरफ से अधिवक्ता रहा है व वर्तमान में है। आज दिनांक को उक्त याचिका आरोपी जमानत हेतु माननीय न्यायालय के समक्ष विचाराधीन थी, उक्त याचिका एवं पूर्व की समस्त याचिकाओं में मुझ प्रार्थी द्वारा समस्त तथ्यों को माननीय न्यायालय के समक्ष प्रकट न करने जो भूल हुई है उसके लिये प्रार्थी हृदय से माननीय न्यायालय से क्षमा चाहता है

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एवं आज दिनांक 8/3/2022 को वहस के दौरान प्रार्थी के व्यवहार से माननीय न्यायालय की गरिमा को जो ठेस पहुँची है उसके लिये भी प्रार्थी सच्चे हृदय से माननीय न्यायालय से क्षमा मांगता है। भविष्य में कभी भी प्रार्थी द्वारा उक्त भूल एवं व्यवहार को दोहराया नहीं जाएगा

अतः माननीय न्यायालय से विनम्र निवेदन है कि प्रार्थी नवयुवक अधिवक्ता है, उसके भविष्य को ध्यान में रखते हुए उदारतापूर्ण व्यवहार रखते हुए प्रार्थी को क्षमा प्रदान करने की कृपा करें

दिनांक
08/3/2022

प्रार्थी
मनीष शर्मा
(एड.)“

In view of the written apology submitted by Shri Sharma, this Court is inclined to give one more opportunity to him to improve his conduct. The Lawyer and litigant must appear before the Court with clean hands without making any attempt to mislead the Court by suppressing the material facts and documents. Accordingly, written apology tendered by Shri Manish Sharma is accepted with a warning to remain more vigilant about the filing of the cases as well as his conduct in the Court.

So far as the merits of the case are concerned, in view of the statement made by the prosecutrix/corpus in W.P. No.16082/2021 as well in view of the fact that first bail application was withdrawn after arguing the matter at length and the third bail application was withdrawn by the senior counsel by mentioning specifically that Shri Manish Sharma has not briefed him properly and in view of the

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specific allegations that the applicant has raped a minor girl, no case is made out for grant of bail.

The application fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge

Abhi