

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE RAJEEV KUMAR SHRIVASTAVA

ON THE 15th OF JUNE, 2022

MISC. CRIMINAL CASE No. 20237 of 2022

Between:-

MAHIPAT SINGH, S/O SHIVRAJ SINGH
RAJAWAT, AGED ABOUT 19 YEARS, R/O-
VILLAGE PULAWALI POLICE STATION
UMARI DISTRICT BHIND (MADHYA
PRADESH)

.....APPLICANT

(BY SHRI RAM KISHORE SHARMA- ADVOCATE)

AND

THE STATE OF MADHYA PRADESH
THROUGH POLICE STATION POLICE
STATION UMARI, DISTRICT BHIND
(MADHYA PRADESH)

.....RESPONDENT

(BY SMT. ABHA MISHRA- PUBLIC PROSECUTOR)

.....
*This application coming on for hearing this day, the Court passed
the following:*

ORDER

The applicant has filed this **fourth** application under Section 439 of the Code of Criminal Procedure for grant of bail. Applicant has been arrested on 09.02.2021 by Police Station Umari, District Bhind (M.P.) in connection with Crime No.339 of 2020 registered for offence punishable under Sections 323, 294, 506 of the Indian Penal Code, added Section 302 of the Indian Penal Code.

It is submitted by learned counsel for the applicant- **Mahipat Singh**

that this is the fourth bail application of the applicant. Earlier on 17.08.2021, the Co-ordinate Bench of this Court had rejected the first bail application of the applicant considering the merits of the case and liberty was granted to revisit this Court after examination of main prosecution witnesses or if the trial gets further delayed, whichever is earlier. From 17/08/2021, till date only two prosecution witnesses have been examined. There is no progress in trial. It is further submitted that initially, the case was registered for the commission of offence under Sections 323, 294, 506 of the Indian Penal Code and thereafter, Section 302 of the Indian Penal Code has been enhanced. The victim was admitted and thereafter he was fully recovered and discharged. Thereafter, during COVID-19 period, he was infected by the Corona Virus. The relevant report with regard to discharge summary given by the hospital concerned is annexed at page No.46 wherein it has been mentioned that the patient had fallen suddenly in saturation due to rapid antigen test of covid-19 and no surgical treatment is required, therefore, it cannot be said that offence under Section 302 of the Indian Penal Code is made out against the present applicant. Speedy trial is the right of an accused and he cannot put behind the bar due to delay in trial. Since there is no progress in trial, therefore, the applicant may be granted bail.

Per contra, learned State counsel has vehemently opposed the prayer and submitted that the case is registered under Sections 323, 294, 506 of the Indian Penal Code added Section 302 of the Indian Penal Code and in query report, Dr. Sarthak Juglan, Associate Professor & Head of

the Department of Forensic Medicine, GR Medical College, Gwalior has opined that after perusal of the above documents; the sequence of events right from the infliction of injury, during the course of treatment and death of the victim are interconnected. After considering the above fact, the reply to the queries raised by the police is that the death of Sunder Singh is attributable to the injury sustained as mentioned in the MLC and hospital record. It is further submitted that as per Expert opinion, it is apparent that the deceased died due to injury caused by the present applicant, therefore, Section 302 of the Indian Penal Code is made out against him. It is further submitted that earlier application was rejected on merits and there is no change in circumstances under which this repeat application shall be considered. Hence, prayed for rejection of bail application.

Heard learned counsel for the parties at length and perused the documents available on record as well as the case diary.

On perusal of the case diary as well as documents available on record, it is apparent that earlier on 17/08/2021, the Co-ordinate Bench of this Court had rejected the bail application of the applicant considering the merits of the case and liberty was granted to revisit this Court after examination of main prosecution witnesses or if the trial gets further delayed, whichever is earlier. The applicant is in custody from 09/02/2021 i.e. around one year and four months and till date, only two prosecution witnesses have been examined thereby there is no progress in trial.

The basic concept of criminal jurisprudence is that the accused shall be treated as innocent until proves guilty and as the speedy trial is the fundamental right of an accused and it should be

fulfilled by concluding the trial in due course, therefore, the accused cannot be kept behind bar for indefinite period.

Considering the aforesaid facts of the case as well as the arguments advanced by learned counsel for the parties, without commenting upon the merits of the case, the application is allowed and it is hereby directed that the applicant shall be released on bail on his furnishing personal bond of **Rs.1,00,000/- (Rupees One Lakh only)** with one solvent surety in the like amount to the satisfaction of the Court concerned for his regular appearance before the trial Court concerned on the dates fixed by it.

This order will remain operative subject to compliance of the following conditions by the applicant :-

1. The applicant will comply with all the terms and conditions of the bond executed by him;
2. The applicant will cooperate in the investigation/trial, as the case may be;
3. The applicant will not indulge himself in extending inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to the Police Officer, as the case may be;
4. **The applicant shall not commit any kind of offence. In case of commission of any kind of offence, this bail order shall automatically stand cancelled and whole amount of bail bonds will be forfeited;**
5. The applicant will not move in the vicinity of complainant party and applicant will not seek unnecessary adjournments during the trial; and
6. The applicant will not leave India without previous permission of the trial Court/Investigating Officer, as the case may be;
7. **The applicant shall mark his presence before the SHO of concerning police station once in every month**

till conclusion of trial.

Application stands **disposed of** in above terms.

Let a copy of this order be sent to the trial Court concerned for compliance.

Certified copy/ e-copy as per rules/directions.

(RAJEEV KUMAR SHRIVASTAVA)
JUDGE

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