

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

ON THE 10th OF AUGUST, 2022

MISC. CRIMINAL CASE NO. 36502 OF 2022

Between:-

**KAYUB KHAN S/O LATE SHRI
CHHUTTAN KHAN, AGED 29 YEARS,
OCCUPATION: KHETI, R/O. VILLAGE
URAHNA, TEHSHIL BAMORE, DISTRICT
MORENA (MADHYA PRADESH)**

.....APPLICANT

(BY SHRI S.K.SHRIVASTAVA – ADVOCATE)

AND

**STATE OF MADHYA PRADESH
THROUGH POLICE STATION
VISHWVIDYALAYA, DISTRICT
GWALIOR (MADHYA PRADESH)**

.....RESPONDENT

***(BY SHRI RAJIV UPADHAYAY – PUBLIC PROSECUTOR FOR
RESPONDENT/STATE)***

(BY SHRI R.K.GOYAL – ADVOCATE FOR THE COMPLAINANT)

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

ORDER

This is the **first** application under Section 438 of Cr.P.C filed by

the applicant, who is apprehending his arrest in connection with Crime No.215/2022 registered at Police Station University, District Gwalior (Madhya Pradesh) for the offence punishable under Sections 420, 120-B of IPC.

It is the submission of learned counsel for applicant that applicant apprehends his arrest on the basis of registration of offence as referred above. His brother Sapat Khan and complainant entered into an agreement to sale in respect of landed property in question and sale deed was executed on 10.03.2022. It appears that after receiving consideration and execution of sale deed, an objection has been filed by complainant to the extent that sale deed has been executed by fraud and complainant went to Registrar Office only to execute agreement to sale. It is highly improbable especially when consideration was received before the Statutory Authority (Registrar for registration). A civil suit has already been filed by complainant against brother of applicant and one another person. Both became owner of the disputed property by way of sale deed. Applicant has no role to play, at best an attesting witness. Confinement may bring social disrepute and personal convenience especially when applicant does not bear any criminal record and role is allegedly confined . Applicant undertakes to cooperate with investigation/trial and he further undertakes to perform community service voluntarily by serving the environment and national/social cause by contributing his part voluntarily to purge his misdeeds. Under these grounds, he prayed for anticipatory bail.

Learned counsel for the respondent/State as well as counsel for the complainant opposed the prayer but the counsel for the respondent/State

fairly submits that there is no criminal antecedent against the present applicant.

Heard the learned counsel for the parties and perused the documents appended thereto.

Considering Section 3 of the Transfer of Property Act, 1882 reads as under:-

“3. Interpretation clause -

In this Act, unless there is something repugnant in the subject or context,-

“immovable property” does not include standing timber, growing crops or grass; “instrument” means a non-testamentary instrument; [“attested” in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has been some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary;]”

wherein “attested” word has been defined, in which, applicant *prima facie* attested the executant of the instrument, this Court intends to allow this anticipatory application. The application is allowed. It is hereby directed that in the event of arrest, the applicant shall be released on bail on furnishing a personal bond in the sum of **Rs.50,000/- (Rs. Fifty Thousand Only) with two solvent sureties** of the like amount to the satisfaction of Arresting Authority/Investigating Officer.

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 him from disclosing such facts to the Court or to the Police Officer, as the case may be.
4. The applicant shall not commit an offence similar to the offence of which he is accused;
5. The applicant will not seek unnecessary adjournments during the trial;
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 on every Sunday before the Police Station University, District Gwalior between 10:00 am to 02.00 pm till conclusion of trial.**

8. एतद् द्वारा यह निर्देशित किया जाता है कि आवेदक 10 पौधों का (यथासंभव कोई भी फल देने वाले पेड़ अथवा नीम/पीपल जैसे पेड़) रोपण करेगा तथा उसे अपने आस पड़ोस में पेड़ों की सुरक्षा की व्यवस्था करनी होगी ताकि पौधे सुरक्षित रह सकें। आवेदक का यह कर्तव्य है कि न केवल पौधों को लगाया जाए, बल्कि उन्हें पोषण भी दिया जाए। “वृक्षारोपण के साथ, वृक्षापोषण भी आवश्यक है।” आवेदक संभवतः 6–8 फीट ऊँचे पौधे/पेड़ों को 3–4 फीट गड्ढा करके लगायेगा ताकि वे शीघ्र ही पूर्ण विकसित हो सकें। अनुपालन सुनिश्चित करने के लिए, आवेदक को रिहा किये जाने की दिनांक से 30 दिनों के भीतर संबंधित विचारण न्यायालय के समक्ष वृक्षों/पौधों के रोपण के सभी फोटो प्रस्तुत करना होंगे। तत्पश्चात्, विचारण के समापन तक हर तीन महीने में आवेदक के द्वारा विचारण न्यायालय के समक्ष प्रगति रिपोर्ट प्रस्तुत की जाएगी।

वृक्षों की प्रगति पर निगरानी रखना विचारण न्यायालय का कर्तव्य है क्योंकि पर्यावरण क्षरण के कारण मानव अस्तित्व दांव पर है और न्यायालय अनुपालन के बारे में आवेदक द्वारा दिखाई गई किसी भी लापरवाही को नजर अंदाज नहीं कर सकता है। इसलिए आवेदक को पेड़ों की प्रगति और आवेदक द्वारा अनुपालन के संबंध में एक रिपोर्ट प्रस्तुत करने के लिए निर्देशित किया जाता है एवं आवेदक द्वारा किये गये अनुपालन की एक संक्षिप्त रिपोर्ट इस न्यायालय के समक्ष प्रत्येक तीन माह में (अगले छः महीनों के लिए) रखी जायेगी जिसे कि “निर्देश” शीर्ष के अंतर्गत रखा जाएगा।

वृक्षारोपण में या पेड़ों की देखभाल में आवेदक की ओर से की गई कोई भी चूक आवेदक को जमानत का लाभ लेने से वंचित कर सकती है।

आवेदक को अपनी पसंद के स्थान पर इन पौधों/पेड़ों को रोपने की स्वतंत्रता होगी, यदि वह इन रोपे गये पेड़ों की ट्री गार्ड या बाड़ लगाकर रक्षा करना चाहता है, तो वह अपने स्वयं के व्यय पर यह करने के लिये स्वतंत्र होगा।

इस न्यायालय द्वारा यह निर्देश एक परीक्षण प्रकरण के तौर पर दिए गए हैं ताकि हिंसा और बुराई के विचार का प्रतिकार, सृजन एवं प्रकृति के साथ एकाकार होने के माध्यम से सामाजिक स्थिति स्थापित किया जा सके। वर्तमान में मानव अस्तित्व के आवश्यक अंग के रूप में दया, सेवा, प्रेम एवं करुणा की

प्रकृति को विकसित करने की आवश्यकता है क्योंकि यह मानव जीवन की मूलभूत प्रवृत्तियां हैं और मानव अस्तित्व को बनाए रखने के लिए इनका पुनर्जीवित होना आवश्यक है।

“यह प्रयास केवल एक वृक्ष के रोपण का प्रश्न न होकर बल्कि एक विचार के अंकुरण का है।”

यह निर्देश आवेदक के द्वारा स्वतः व्यक्त की गई सामुदायिक सेवा की इच्छा के कारण दिया गया है जो स्वैच्छिक है।

It is expected from the applicant that he shall submit photographs by downloading the mobile application (NISARG App) prepared at the instance of High Court for monitoring the plantation through satellite/Geo-tagging/Geo-fencing.

Application stands **allowed and disposed of.**

Copy of this order be sent to the trial Court concerned for compliance.

Certified copy as per rules.

**(ANAND PATHAK)
JUDGE**