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HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

[S. B. : HON'BLE MR. JUSTICE VIVEK RUSIA]

M. Cr. C. No.51699/2021

Vinod S/o Amritlal Rathore,
Aged – 40 years, Occupation – Private Job,
R/o – Bakhatgarh, Teshil Badnawar,
Distt. Dhar (M.P.)

- Applicant

V e r s u s

State of Madhya Pradesh,
Through Police Station Badnawar,
Distt. Dhar (M.P.)

- Respondent

Shri Akash Rathi, learned counsel for the applicant.

Shri Chetan Jain, learned Panel Lawyer for the respondent /
State.

Indore, dated 03/12/2021

This is the first application filed under Section 439 of Cr.P.C. by the applicant, who is in custody since 06/09/2021 in connection with Crime No.308/2018 registered at Police Station Badnawar, District Dhar (M.P.) for the offence punishable under Section 302, 120-B and 34 of the Indian Penal Code, 1860.

As per prosecution case, the applicant has been made accused along with Rahul, Gangaram and Pawan. After discovery of dead body of Gopal on 14/09/2018. All the four persons have been made accused on the basis of last seen together with the deceased. Co-accused Rahul, Gangaram and Pawan were arrested and they were tried *vide* Sessions Trial No.49/2018 and *vide* judgement dated 10/12/2020 they have been acquitted by the Additional Sessions Judge, Badnawar as the prosecution has failed to prove the theory of last seen together. After their acquittal present applicant was arrested and now he is facing trial.

Learned counsel for the applicant submits that he appears to be a

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brother of Rahul and he is made accused. He is working in *Jila Sahakari Sangh Maryadit, Dhar*. He was very much available in the town but the police has never arrested him. The same evidence is liable to be considered in the trial, which had already been discarded by the trial Court. Hence, prays for grant of bail to the applicant.

On the other hand, learned counsel appearing for the respondent/State opposes the prayer for grant of bail with submission that the applicant is a habitual offender. No criminal appeal has been filed against the acquittal of Rahul, Gangaram and Pawan.

In view of the aforesaid facts and circumstances of the case and looking to the period of custody and the evidence collected against the applicant, without further commenting anything on the merits of the case, it would be appropriate to enlarge the applicant on bail.

Accordingly, this application is allowed and the applicant is directed to be released on bail upon his furnishing personal bond in the sum of **Rs.40,000/- (Rupees Forty Thousand Only)** with one solvent surety in the like amount to the satisfaction of the trial Court for his regular appearance before the trial Court during the trial as and when required and shall also abide by the conditions enumerated under Section 437(3) Cr.P.C.

Before releasing the applicant from custody the jail authorities are directed to medically examine him in order to rule out the possibility of COVID-19 infections and shall comply with the direction given by the Hon'ble Apex Court in Writ Petition No.01/2020.

Certified copy as per rules.

(VIVEK RUSIA)
J U D G E