IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR
ON THE 24th OF JUNE, 2022

MISC. CRIMINAL CASE No. 30128 of 2022

Between:-

SAYDAM S/O DOORSINGH BADOLE , AGED ABOUT 30 YEARS, OCCUPATION: LABORER GRAM VERVADA, MAJRI BAIDI FALIYA, DISTRICT BARWANI (MADHYA PRADESH)

.....APPLICANT

(BY SHRI ASHISH GUPTA, ADVOCATE)

AND

THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THROUGH POLICE STATION BARWANI (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI SUDHANSHU VYAS, P.L.)

This application coming on for orders this day, the court passed the following:

ORDER

They are heard. Perused the case diary / challan papers.

This is the **second bail** application of the applicant under Section 439 of Criminal Procedure Code, 1973, as he / she is implicated in connection with Crime No.910/2021 registered at

Police Station Barwani, District Barwani (MP) for offence punishable under Sections 302 and 201 of the Indian Penal Code, 1860. The applicant is in custody since 21/12/2021.

His earlier bail application M.Cr.C. No.10407/2022 has already been dismissed by this Court on merits vide order dated 23/03/2022, however, with liberty reserved to the applicant to renew his prayer after the FSL report is received.

Counsel for the applicant has submitted that now the FSL report has already been received and the articles which have been seized from the applicant were although blood stained, however, there is no further finding regarding grouping of the blood nor there is any DNA profiling. In such circumstances, when the FSL report in itself is inconclusive, it cannot be relied upon and the applicant deserves to be released on bail. It is further submitted that the applicant is in jail since 21/12/2021 and final conclusion of the trial is likely to take sufficient long time. Hence, it is submitted that the bail application be allowed and the applicant be released on bail. Counsel has also relied upon a decision rendered by the Supreme Court in the case of ***Madhav Vs. State of Madhya Pradesh reported as 2021 CRI.L.J. 3902*** wherein also, the blood stain articles recovered at the instance of the accused though had human blood on them as per the FSL report but as there was no grouping of the same, the Supreme Court has discarded such evidence.

Counsel for the respondent / State, on the other hand has opposed the prayer and it is submitted that looking to the fact that his earlier application has already been dismissed on merits and also considering the human blood on the cloths of the applicant, no case for grant of bail is made out.

Heard learned counsel for the parties and perused the record.

From the record, it is apparent that the deceased died due to crush injuries caused by heavy stones and from the possession of the applicant, blood stains cloths have been seized. So far as the decision rendered by the Supreme Court in the case of Madhav (Supra) is concerned, the relevant paragraphs of the same read as under:-

> "27. Apart from the fact that the witnesses in whose presence the seizure of the weapons was allegedly effected, had turned hostile, there was also one more thing. There is nothing on record to show that the blood stains said to have been present in those weapons, matched with the blood of the deceased. Unfortunately, the High Court proceeded on a wrong premise that there was scientific evidence to point to the guilt of the accused, merely because as per Exhibit P25 (FSL Report), the knife and lathis said to have been seized by the police, contained stains of human blood. The prosecution has not established either through the report of FSL or otherwise, that the blood stains contained in the knife and lathis were that of the deceased.
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> 28. We are conscious of the fact that there is a divergence of views on this aspect. In Raghav Prapanna Tripathi vs. The State Of Uttar Pradesh, a Constitution Bench of this Court by a majority held that, "…that it would be farfetched to conclude from the mere presence of bloodstained earth that that earth was stained with human blood and that the human blood was that of the victims…". In Kansa Behera vs. State of Orissa, this Court acquitted the appellant on the ground that though the Serologist report found the shirt and dhoti

recovered from the possession of the appellant to be stained with human blood, there is no evidence to connect the same with the blood of the deceased. In Surinder Singh vs. State of Punjab, the blood stains found on the knife allegedly used for the commission of the offence, were established to be human blood. But this Court rejected the prosecution theory 2 AIR 1963 SC 74 3 (1987) 3 SCC 480, 4 (1989) Supp.(2) SCC 21 on the ground that those blood stains on the knife were not shown to be of the same group as the blood of the deceased. In Raghunath, Ramkishan & Ors. vs. State of Haryana, this Court held that the blood stain, though of a human blood, is not conclusive evidence to show that it belongs to the blood group of the deceased. In Sattatiya vs. State of Maharashtra, this Court found the credibility of the evidence relating to the recovery of the object used for the commission of the crime, substantially dented, on account of the fact that the blood stains, though found to be of human source, could not be linked with the blood of the deceased.

29. In contrast, this Court held in State of Rajasthan vs. Teja Ram and Others, that at times the Serologist may fail to deduct the origin of the blood, either because the stain is too insufficient or because of hematological changes and plasmatic coagulation. After referring to the Constitution Bench decision in Raghav Prapanna Tripathi (supra), this 5 (2003) 1 SCC 398 6 (2008) 3 SCC 210 7 (1999) 3 SCC 507 Court held in Teja Ram (supra) that it is not as though the circumstances arising from the recovery of the weapon would stand relegated to disutility, in all cases where there was failure of detecting the origin of the blood. This Court indicated in Teja Ram (supra) that, "…the effort of the Criminal Court should not be to prowl for imaginative doubts…" and that the doubts should be of reasonable dimension, which a judicially conscientious mind entertains with some objectivity.

30. The decision Teja Ram (supra) was followed in Gura Singh vs. State of Rajasthan and in Prabhu Dayal vs. State of Rajasthan.

31. In R. Shaji vs. State of Kerala, this Court took note of almost all previous decisions starting from Prabhu Babaji Navle vs. State of Bombay and including those in Raghav Prapanna Tripathi (supra); Teja Ram (supra), Gura Singh (supra); John Pandian vs. State; and Sunil Clifford 8 (2001) 2 SCC 205 9 (2018) 8 SCC 127 10 (2013) 14 SCC 266 11 AIR 1956 SC 51 12 (2010) 14 SCC 129 Daniel vs. State of Punjab and came to the conclusion that once the recovery is made in pursuance of a disclosure statement made by the

> accused, the matching or non matching of blood groups loses significance.
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> 32. Therefore, as pointed out by this Court in Balwan Singh vs. State of Chhattisgarh, there cannot be any fixed formula that the prosecution has to prove, or need not prove that the blood groups match. But the judicial conscience of the Court should be satisfied both about the recovery and about the origin of the human blood.
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> 33. In the case on hand, even PW1, who allegedly witnessed the seizure had turned hostile. Right from the beginning there has been an attempt on the part of the prosecution to shield the culprits named in the first FIR, on account of political pressure, as admitted by PW14 and corroborated by PW9, whom the prosecution considered to be a star witness. Unfortunately, both the Sessions Court and the High Court completely overlooked these aspects.
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> (Emphasis supplied)

A perusal of the aforesaid decision clearly reveals that even the Supreme Court has opined that there is no straight jacket formula to appreciate the FSL report and it cannot be discarded simply because there is no grouping, what the Supreme Court has observed is that the *judicial conscience of the Court should be satisfied both about the recovery and about the origin of the human blood*. In the aforesaid case, the Supreme Court had all the evidence available on record relied upon by the prosecution *during the trial* and in such circumstances, the FSL report was not relied upon. In the present case, however, the trial is at the initial stage as the evidence is yet to be recorded and at this stage this Court has no reason to disbelieve the seizure of the cloths of the applicant which were found to be stained with human blood as per the FSL report, and thus on the face of it, the involvement of the applicant in the present case cannot be ruled out. This court is of the considered

opinion that in the presence of such incriminating material already available on record against the applicant, it would be too early to jump on the conclusion regarding his innocence. In such circumstances, no case for grant of bail is made out.

M.Cr.C. is accordingly **dismissed.**

(Subodh Abhyankar)
Judge

krjoshi