

HIGH COURT OF MADHYA PRADESH AT JABALPUR
SINGLE BENCH: HON'BLE SHRI JUSTICE SUBHASH KAKADE

Misc. Criminal Case No.14937/2015

APPLICANT : Mohd. Sheru.

Versus

RESPONDENT : State of Madhya Pradesh.

 Shri J.N. Tripathi, Advocate for the applicant.

Shri R.S. Shukla, Panel Lawyer for the respondent-State.

(O R D E R)
Passed on: 09.10.2015

This is the fourth bail application filed on behalf of the applicant under Section 439, Criminal Procedure Code, 1973, hereinafter referred to as 'the Code'.

Details of rejection orders:-

S.No.	Particulars	M.Cr.C. No.	Date of Rejection
1.	First application	8590/2014	11.07.2014
2.	Second application	11631/2014	26.08.2014
3.	Third application	18335/2014	17.03.2014

2. Applicant **Mohd. Sheru** is in custody since 20.04.2014 in connection with Crime No.285/2014 registered at Police Station Maihar, District Satna (M.P.) for the offence punishable under Sections 341, 323, 294 and 307/34 of the IPC.

3. It is submitted by Shri J.N. Tripathi, learned counsel for the applicant that the applicant is innocent and has been falsely implicated in this case. It is further submitted that the injury inflicted on the person of

complainant Pintu Chourasia has not been opined by the Doctor as dangerous to life, therefore, no offence under Section 307 of IPC is made out and other co-accused persons have already been granted bail. Learned counsel further submitted that wife of the applicant is suffering from serious disease and as nobody is available in the family to look after her, hence, applicant's case may be considered sympathetically because the applicant is in custody for more than 15 months and conclusion of trial would take considerable time.

4. Shri J.N. Tripathi, learned counsel for the applicant submits that the circumstances in the case are changed drastically as after recording defence evidence original record of trial Court completely destroyed due to fire. It is also pointed out by learned counsel though vide order dated 12.08.2015 record is reconstructed but, there is remote possibility of completion of trial in near future. On this new ground, it is prayed that the applicant be released on bail.

5. Shri R.S. Shukla, learned counsel for the respondent/State vehemently opposed this repeat bail application.

6. The concept and philosophy of bail was discussed by the Apex Court in case of Vaman Narain Ghiya vs. State of Rajasthan, reported in (2009)2 SCC 281. The principles, which the Court must consider while granting or declining bail, have been culled out by the Apex Court in the case of Prahlad Singh Bhati vs. NCT, Delhi, (2001)4 SCC 280 and in case of State of U.P. vs. Amarmani Tripathi, (2005)8 SCC 21.

7. The Apex Court in case of Siddharam Satlingappa Mhetre vs. State of Maharashtra, 2011(2) MPLJ (Cri.) (S.C.) 116=(2011)1 SCC 694, the Apex Court observed:-

"116. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes

imperative according to the peculiar facts and circumstances of the case.”

8. While discussing pre-trial detention, the Apex Court in case of *Moti Ram vs. State of M.P.*, reported in (1978)4 SCC 47, held:

“14. The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants.”

The Apex Court further observed:-

“Equally important, the burden of his detention frequently falls heavily on the innocent members of his family.”

9. Object of bail is to secure the appearance of the accused person at the time of trial by reasonable amount of bail – Object of bail is neither punitive nor preventive. Another relevant factor is as to whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being. The Court has to take into consideration the delay in concluding the trial which is one of the important factors in deciding whether to grant bail.

10. Right of liberty of the applicant is a fundamental right enshrined under Article 21 of the Constitution which cannot be curtailed unless otherwise provided by procedure established by law where there is possibility of inordinate and unexplained delay in conducting the trial and reasons for delay not attributable to the applicants, he can be directed to be released on bail.

11. In deciding bail applications an important factor which should certainly be taken into consideration by the Court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail.

12. The Apex Court in case of Babba vs. State of Maharashtra, (2005)11 SCC 569, Vivek Kumar vs. State of U.P., (2000)9 SCC 443 and Mahesh Kumar Bhawsinghka vs. State of Delhi, (2000)9 SCC 383 has taken the view that when there is a delay in the trial, bail should be granted to the accused.

13. Learned trial Court in its order dated 09.09.2015 observed that: -

“जहाँ तक अभिलेख के पुनर्निर्माण किए जाने का प्रश्न है, तो अभियुक्तगण एवं अनुपस्थित अभियुक्त शेरू उर्फ फौज की तरफ से अधिवक्ता श्री एस.डी. त्रिपाठी एवं अभियुक्तगण के अधिवक्ता श्री एस.डी. त्रिपाठी, श्री अतुल कुमार द्विवेदी द्वारा अभियोजन की तरफ से प्रस्तुत अभियोग-पत्र की सत्यापित प्रति के कन्टेन्ट्स के संबंध में कोई आपत्ति न होना व्यक्त किया गया। अतः उभयपक्ष की तरफ से प्रस्तुत दस्तावेजों के कन्टेन्ट्स के संबंध में कोई आपत्ति न किए जाने के कारण सत्र प्रकरण क्रमांक 202/14 का पुनर्निर्माण कर पुनर्संख्यांकित किया जाता है।”

14. It is further observed that: -

“प्रकरण में उभयपक्ष की तरफ से न्यायालय की आदेश पत्रिका एवं आरोप-पत्र की सत्य प्रतिलिपि या छायाप्रति को प्रस्तुत नहीं किया जा सका है। अतः यह उचित प्रतीत होता है कि प्रथमतः अभियुक्तगण के विरुद्ध आरोप विरचित किया जावे, तत्पश्चात्

उपलब्ध दस्तावेजों के आधार पर विधि अनुसार कार्यवाही करते हुए प्रकरण में अग्रिम कार्यवाही की जावे।

प्रकरण अभियुक्तगण पर आरोप विरचन एवं अभियोजन साक्षियों के सत्य प्रतिलिपि को अभियुक्तगण की तरफ से प्रस्तुत किये जाने हेतु दिनांक 23.09.2015 को पेश हो।”

15. At this stage the Court will not expressing any opinion as to whether the allegations in the versions of the prosecution or defence are correct or not, as evidence has yet to be led *de-novo*. In the instant case, there is no such pleading or material on record to conclude that delay in the trial is occasioned by the applicant/accused and therefore, this Court is of the considered view that the applicant is entitled to the benefit of bail solely on account of above mentioned new circumstance, which has arisen after rejection of last bail application due to the fact that trial of the case will be commenced *de-novo* after re-construction of record which was destroyed on account of fire.

16. Accordingly, without expressing any opinion on merits of the case, the present application is allowed and it is directed that applicant be released on bail on his furnishing a personal bond in the sum of Rs.40,000/- (Rupees Forty Thousand Only) with two solvent surety each of Rs.20,000/- (Rupees Twenty Thousand Only) to the satisfaction of the trial Court.

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 co-operate in the trial, as the case may be;
3. The applicant shall not commit an offence similar to the offence of which he is accused.

17. A copy of this order be sent to the Court concerned for compliance.
18. Certified copy as per rules.

(Subhash Kakade)
Judge

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