

**IN THE HIGH COURT OF MADHYA
PRADESH**

**AT JABALPUR
BEFORE**

HON'BLE SHRI JUSTICE ANAND PATHAK

ON THE 30th OF JANUARY, 2023

MISC. CRIMINAL CASE No. 57784 of 2022

BETWEEN:-

**AGAM SINGH S/O MUNNA SINGH @
PRITHVIRAJ SINGH, AGED ABOUT 27
YEARS, OCCUPATION: FARMER R/O
VILLAGE CHURHAT P.S. CHURHAT
DISTRICT SIDHI (M.P.) (MADHYA PRADESH)**

.....APPLICANT

(BY SHRI SANKALP KOCHAR- ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
THROUGH POLICE STATION CHURHAT
DISTRICT SIDHI (M.P.) (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI NARENDRA CHOURASIYA- GOVERNMENT ADVOCATE)

This application coming on for admission this day, the court

passed the following:

ORDER

The applicant has filed this SECOND bail application u/S 439 Cr.P.C. for grant of bail, who has been in judicial custody since 19.02.2022 in connection with Crime No.503/2017 registered at

Police Station-Churhat, District-Rewa for the offence punishable under Section 20(b)(ii) of NDPS Act, after having been dismissed the first application being M.Cr.C.No.11101/2022 with the liberty to approach this Court afresh if the trial is not concluded by the 1st December, 2022.

It is the submission of the learned counsel for the applicant that he is suffering confinement since 19.02.2022 and all material prosecution witnesses have been examined, therefore, chance of tampering with the evidence/witness is remote. He referred the earlier order dated 12.04.2022 passed in M.Cr.C.No.11101/2022, whereby Co-ordinate Bench of this Court while dismissing the application filed by the applicant giving the liberty to renew the prayer in the 1st week of December, 2022, if the trial is not concluded.

It is submitted by the counsel for the applicant that trial is still going on. He referred the fact that trial of co-accused resulted in acquittal vide order dated 13.03.2020 passed by the Special Judge (NDPS Act) Sidhi from the same charge. Since applicant was absconding, therefore, he had to suffer the incarceration. Even otherwise, source of implication is memo under section 27 of the Evidence Act. Nothing less nothing

more. He referred the judgment of the Apex Court in the case *of Tufan Singh Vs. State of Tamilnadu (2021) 14 SCC 1*, and also the judgment of this Court in the case of Gopal Krishan Gautam @ Pandit Vs. State of M.P. and Another passed in M.Cr.C.No.31747/2021 dated 28.07.2021. The applicant does not bear any criminal record. Therefore chance be given for course correction. Confinement amounts to pre-trial detention. He undertakes to cooperate in trial and will abide by all the terms and conditions as imposed by this court. He further undertakes to perform community service to purge his misdeeds if any and to save National/Environmental/ Social Cause. Under these grounds, counsel prayed for bail.

Learned counsel for the respondent/State opposed the prayer and submitted that he bears criminal record of nine cases of Excise Act. However, he fairly submits that no case of NDPS Act found against the applicant except this case.

Considering the period of custody and the fact that co-accused has already been acquitted by the trial Court as well as the fact that source of implication is based upon the memo under section 27 of the Evidence Act

and 67 of the NDPS Act, this Court intends to allow the application but with certain stringent conditions and a chance be given to him for course correction, without commenting on the merits of the case, and as per the spirit of community service echoed in the order of **Sunita Gandharva Vs. State of M.P.** reported in **2020(3) MPLJ (Cri.) 247**, the application is allowed. 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 two solvent sureties in the like amount to the satisfaction of 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 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 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 not involve in any criminal activity in future and would participate in creative pursuits.

8. Th applicant shall mark his presence in the first week of every month before the Police Station concerned till the conclusion of the trial between 10:30 am to 2:30 pm.

9. It is made clear that this bail is granted once the case is made out for bail and thereafter, direction for plantation of saplings is given and it is not the case where a person intends to serve social cause can be given bail without considering the merits.

एतद् द्वारा यह भी निर्देशित किया जाता है कि **आवेदक 10 पौधों का फल देने वाले पेड़ अथवा नीम/पीपल** रोपण करेगा तथा उन्हें अपने आस पड़ोस में पेड़ों की सुरक्षा के लिए बाड़ लगाने 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 विशेषतः **6-8 फीट ऊंचे पौधे/पेड़ों को लगायेगे 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 विचारण न्यायालय** के समक्ष वृक्षों/पौधों के रोपण के सभी फोटो प्रस्तुत करने होंगे। तत्पश्चात्, अगले तीन वर्ष तक हर तीन महीने में आवेदक के द्वारा विचारण न्यायालय के समक्ष प्रगति रिपोर्ट प्रस्तुत की जाएगी।

वृक्षों की प्रगति पर निगरानी रखना आवेदक 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 विचारण न्यायालय के समक्ष प्रत्येक तीन माह में प्रस्तुत की जायेगी।

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, अन्यथा

आवेदक को वृक्षों के रोपण के लिए तथा उनके सुरक्षा उपायों के लिए आवश्यक खर्चे वहन करना होंगे।

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 सुधारा 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 प्रवृत्तियाँ हैं और मानव अस्तित्व को बनाए रखने के लिए इनका पुनर्जीवित होना आवश्यक है।

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

“यह प्रयास केवल एक वृक्ष के रोपण का प्रश्न न होकर बल्कि एक विचार के अंकुरण का 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.

A copy of this order be sent to the trial Court concerned for compliance and information.

Certified copy as per rules.

(ANAND PATHAK)

JUDGE

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