

IN THE HIGH COURT OF MADHYA
PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL DHAGAT

ON THE 23rd OF JANUARY, 2024

MISC. CRIMINAL CASE No. 57771 of 2023

BETWEEN:-

BHARAT SINGH KUSHWAHA S/O SHRI
RADHESHYAM KUSHWAHA, AGED ABOUT 25
YEARS, OCCUPATION: UNEMPLOYED R/O
VILLAGE SIRAI DISTRICT RAISEN (M.P.) (MADHYA
PRADESH)

....APPLICANT

(BY SHRI SANKALP KOCHAR - ADVOCATE)

AND

THE STATE OF MADHYA PRADESH THROUGH
POLICE STATION RAISEN DISTRICT RAISEN (M.P.)
(MADHYA PRADESH)

....RESPONDENT

(BY SHRI S. K. RAI - GOVT. ADVOCATE)

.....
*This application coming on for admission this day, the court
passed the following:*

ORDER

1. This is a repeat (third) application filed under Section 439 of Cr.P.C. on behalf of applicant, who is in jail since 24.4.2023 in connection with Crime No. 153/2023, registered at Police Station Kotwali District Raisen for the offence punishable under Sections 307, 294, 323, 324, 506, 34 and 302 of the Indian Penal Code.

2. Learned counsel appearing for the applicant submitted that

as per prosecution story applicant was armed with lathi. 12 injuries is said to have been caused to the victim and except one injury all other injuries are incised wound. One injury is a lacerated wound skin deep and that injury could not have been caused by a lathi. Applicant has been falsely implicated in the case as there was previous enmity and complainant has been convicted in another case. In these circumstances, applicant may be enlarged on bail.

3. Learned counsel appearing for the State has opposed the bail application and submitted applicant along with other co-accused persons participated in the offence. He was also armed with a lathi. Lacerated wound could have caused by the applicant or other co-accused persons. At present there is eye witness account that applicant was present and he participated in the offence. It is further submitted that as per deposition, 7 witnesses have supported the prosecution case before the trial Court. Reference was also give to deposition sheet. Applicant is also having four criminal records. In these circumstances, prayer is made for dismissal of the bail application.

4. Heard learned counsel for the parties.

5 . Merit of the case means when both parties are heard and evidence of both parties is weighed by Court i.e. examination-in-chief, cross-examination and documentary evidence. Once order is passed on merits of the case then trial Court as well as parties are bound by the findings in order and no contrary finding can be given by trial Court. To save a party from prejudice, it is a rule that bail applications shall not be

decided on merits of the case. High Court will not appreciate evidence adduced in trial and same is work of trial Court. Discussing evidence of prosecution will not amount to decide case on its merits. In these circumstances, deposition filed in Court is not considered.

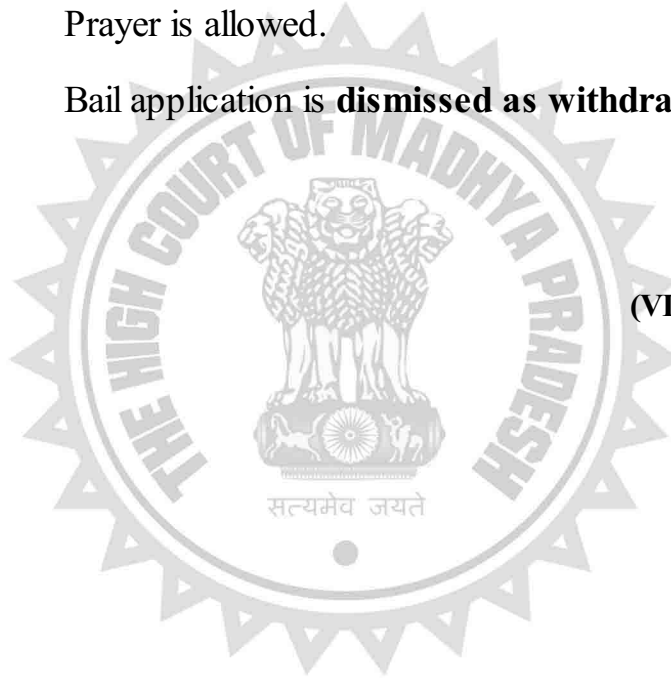
6. Prosecution recorded statement of eye witnesses under Section 161 of Cr.P.C., which will have edge over opinion of doctor and inconsistency will not be of much value.

7. Counsel for the applicant at this stage of arguments prays for withdrawal of the application.

8. Prayer is allowed.

9. Bail application is **dismissed as withdrawn.**

AD/



(VISHAL DHAGAT)
JUDGE