
(2020) 08 MP CK 0215

Madhya Pradesh High Court (Gwalior Bench)

Case No: Miscellaneous Criminal Case No. 23002 Of 2020

Nitesh Tyagi

APPELLANT

Vs

State Of M.P

RESPONDENT

Date of Decision: Aug. 14, 2020

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 439#Indian Penal Code, 1860 " Section 34, 43, 188, 268, 269, 294, 323, 327, 329, 506

Citation: (2020) 08 MP CK 0215

Hon'ble Judges: Anand Pathak, J

Bench: Single Bench

Advocate: V.K.Saxena, Ayush Saxena, C.P.Singh

Final Decision: Allowed/Disposed Of

Judgement

The applicant has filed this first bail application u/S.439 Cr.P.C for grant of bail. Applicant has been arrested on 23.6.2020 by Police Station, Aswar,

District Bhind, in connection with Crime No.24/2020 for the offence punishable under Sections 323, 294, 506/34, 327, 329 of IPC.

It is the submission of learned senior counsel for the applicant that false case has been registered against him and he is suffering confinement since

23.6.2020 and charge-sheet has already been filed. It is further submitted that ingredient of offence under Section 329 of IPC is not available in the

present case because applicant along with his friends (co-accused) demanded Rajshri Gutka (scented tobacco) and when the complainant refused to

give said product, then they have beaten him and caused grievous hurt to him, but since asking for a product is not an offence, therefore, ingredient of

Section 329 of IPC is not available. It is further submitted that it was a minor scuffle which converted into ugly event. It is further submitted that co-

accused Harendra Tyagi has been granted benefit of bail vide order dated 4.8.2020 in M.Cr.C.No.23542/20. Looking to the challenging times of

covid-19 pandemic and the period of custody as well as the fact that no previous criminal record of the applicant exists, his case be considered

sympathetically. He undertakes to perform community service. On these premises, he prayed for bail.

Learned counsel for the respondent/State opposed the prayer and submits that offence under Section 329 of IPC is made out because applicant and

other co-accused tried to seek product namely Rajshri Gutka (scented tobacco) from the complainant who is a small time vendor and said product is

prohibited by different orders specially order dated 16.4.2020 passed by the District Magistrate, Bhind, whereby the use of any prohibited item like

Gutka was punishable under Sections 268 and 269 of IPC with six months imprisonment and fine of Rs.200/-. Beside that, it was offence under

Section 188 of IPC also. Therefore, asking for product which was otherwise prohibited is an illegal act as per Section 43 of IPC. He relied upon the

judgments in the cases of Ameen and another vs. State of M.P., 2001 (2) M.P.H.T. 144 and Virendra Kumar Gun Sagar Shrivastava vs. State of

M.P., 1998(1) M.P.L.J. 511.

Heard learned counsel for the parties at length through VC and considered the arguments advanced by them.

So far as the submission of learned senior counsel regarding Section 329 of IPC is concerned, same appears to be misplaced prima facie because the

applicant sought product (Gutka) which was otherwise prohibited by the district administration and availability of same could have caused the

complainant to face proceedings under Sections 268 and 269 of IPC or Section 188 of IPC. Therefore, compelling him to commit an illegal act appears

to come under the scope of Section 329 of IPC prima facie, although trial shall unfold the evidence conclusively.

However, considering the period of custody as well as the fact that charge-sheet has already been filed and this was the first offence of the applicant,

therefore, it is expected that applicant shall reform himself and looking to the covid-19 pandemic situation, but without expressing any opinion on the

merits of the case, this application is allowed. It is hereby directed that the applicant shall be released on bail on his furnishing personal bond of

Rs.50,000/- (Rupees Fifty Thousand Only) along with one solvent surety of the like amount to the satisfaction of trial Court and that he will have

to install Arogya Setu App, if not already installed.

In view of COVID-19 pandemic, the jail authorities are directed that before releasing the applicant, his preliminary Corona Virus test shall be

conducted and if he is found negative, then the concerned local administration shall make necessary arrangements for sending the applicant to his

house, and if he is found positive then the applicant shall be immediately sent to concerned hospital for his treatment as per medical norms. If the

applicant is fit for release and if he is in a position to make his personal arrangements, then he shall be released only after taking due travel permission

from local administration. After release, the applicant is further directed to strictly follow all the instructions which may be issued by the Central

Govt./State Govt. or Local Administration for combating the Covid19. If it is found that the applicant has violated any of the instructions (whether

general or specific) issued by the Central Govt./State Govt. or Local Administration, then this order shall automatically lose its effect, and the Local

Administration/Police Authorities shall immediately take him in custody and would sent him to the same jail from where he was released.

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. Applicant will not seek unnecessary adjournments during trial ;

6. The applicant will not leave India without previous permission of the trial Court/Investigating Officer, as the case may be; and

7. The applicant will inform the SHO of concerned police station about his residential address in the said area and it would be the duty of the Public

Prosecutor to send E-copy of this order to SHO of concerned police station for information.

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Application stands allowed and disposed of. E- copy of this order be sent to the trial Court concerned

for compliance, if possible for the office of this Court.

Certified copy/ e-copy as per rules/directions.

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