
(2020) 09 MP CK 0261

Madhya Pradesh High Court (Gwalior Bench)

Case No: Miscellaneous Criminal Case No. 34664 Of 2020

Gagan Upadhyay

APPELLANT

Vs

State Of M.P.

RESPONDENT

Date of Decision: Sept. 28, 2020

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 439#Indian Penal Code, 1860 " Section 336, 394, 397, 398, 427#M.P. Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, 1981 " Section 11, 13#Arms Act, 1959 " Section 25, 27#Evidence Act, 1872 " Section 27

Citation: (2020) 09 MP CK 0261

Hon'ble Judges: S.A. Dharmadhikari, J

Bench: Single Bench

Advocate: Lokendra Shrivastava, Manish Nayak

Judgement

In pursuance of the directions issued by the Apex Court and guidelines issued by the High Court of Madhya Pradesh in the wake of COVID-19

outbreak, the matter was taken up through video conferencing while adhering to the norms of social distancing prescribed by the Government.

Case diary perused.

Learned counsel for the rival parties are heard.

The applicant has filed this first application under section 439 of the Cr.P.C. for grant of bail.

The applicant has been arrested on 20/12/2019 by Police Station Dimni, District Morena (M.P.) in connection with Crime No.147/2019 registered in

relation to the offence punishable under Sections 394, 336, 427, 397 and 398 of IPC, Sections 11/13 of M.P.D.V.P.K.Act and Section 25,27 of the

Arms Act.

Prosecution story, in short, is that while the complainant was coming to Ambah from Morena, he was carrying a white bag containing Rs.1,80,000/-.

The applicant and other co-accused persons snatched the bag. One of the miscreants assaulted the complainant on his head by butt of pistol and beat

his nephew and driver with kicks and fists. One of the accused person also fired in the air. Thereafter all of them fled in a Duster Car. On the

aforesaid basis, crime has been registered.

Learned counsel for the applicant submits that applicant has been falsely implicated in the case. Applicant is in custody since 20/12/2019 Charge-sheet

has been filed. No further custodial interrogation is required. In the Test Identification Parade, the applicant has not been recognized. Rs.15,000/- and

motorcycle have been recovered from the possession of the applicant. He has been implicated on the basis of memorandum of co-accused recorded

under section 27 of Evidence Act. He has already put in more than nine months of custody. Counsel for the applicant further submitted that due to

COVID-19 outbreak, trial is being delayed and detention of applicant in already congested prisons may be detrimental. It is also submitted that the co-

accused Banwari Singh, Akash Tomar and Rampreet Gurjar have been enlarged on bail by this Court vide orders dt.08.07.2020, dt.02.07.2020 and

05/8/2020 passed in M.Cr.C.No.19338/2020, M.Cr.C.No.21986/2020 and M.Cr.C. No.23008/2020 respectively. The applicant is a permanent resident

of District Agra (U.P.) and there is no likelihood of his absconsion or tampering with the prosecution evidence. The applicant is ready to abide by all

the terms and conditions as may be imposed by this Court. With the aforesaid submissions, prayer for grant of bail is made.

Learned Panel Lawyer for the State opposed the application contending that on the basis of the allegations and the material available on record, no

case for grant of bail is made out. It is also submitted that other 6 cases have been registered against the applicant and on such grounds prays for

rejection of the application.

At this stage, learned counsel for the applicant volunteered to deposit an amount of Rs.5,000/-(Rupees Five Thousand Only) in the account of the High

Court Bar Association, Gwalior.

However, it would not be desirable to enter into the merits of the rival contentions at this juncture.

Considering the overall facts and circumstances of the case coupled with the fact that trial is not likely to conclude in near future and prolonged pre-

trial detention being an anathema to the concept of liberty, this Court is inclined to extend the benefit of bail to the applicant.

Accordingly, without expressing any opinion on merits of the case, this application is allowed and it is directed that the applicant be released on bail on

furnishing a personal bond in the sum of Rs. 50,000/- (Rupees Fifty Thousand only) with one local surety of the like amount to the satisfaction of the

trial Court/committal Court for his appearance on the dates given by the concerned Court.

It is made clear that benefit of bail shall be extended to the applicant only on depositing an amount of Rs. 5,000/- (Rupees Five Thousand Only) in the

account of the High Court Bar Association, Gwalior for the purpose of assistance and rehabilitation of those members of the Bar, who are facing

financial distress due to Lockdown and restrictive functioning of the Courts owing to ongoing COVID-19 pandemic. This Court has no manner of

doubt that the office bearers and the Senior members of the Bar shall ensure that the donation reaches the rightful and deserving claimants. The

applicant shall submit an attested photocopy of such receipt before the concerned Court for placing the same on record.

The applicant shall also furnish a written undertaking before the concerned court that he will abide by the terms and conditions of various circulars, as

well as, orders issued by the Central Government, State Government and local administration from time to time such as maintaining social distancing,

physical distancing, hygiene etc. to avoid proliferation of Corona virus.

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 him/her from disclosing such facts to the Court or to the Police Officer, as the case may be;
4. The applicant shall not commit any other offence during pendency of the trial, failing which this bail order shall stand cancelled automatically without further reference to the Bench.
5. The applicant shall install Arogya Setu App (if not already installed) in his mobile phone;
6. The applicant will not seek unnecessary adjournments during the trial; and
7. The applicant will not leave India without previous permission of the trial Court/Investigating Officer, as the case may be.

Learned Panel Lawyer is directed to send an e-copy of this order to the Station House Officer of the concerned Police Station for information and necessary action.

E- copy of this order be sent to the trial Court concerned for compliance, if possible by the office of this Court.

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