
(2021) 02 MP CK 0122

Madhya Pradesh High Court (Gwalior Bench)

Case No: Miscellaneous Criminal Case No.9431 Of 2021

Mukesh Agrawal

APPELLANT

Vs

State Of M.P

RESPONDENT

Date of Decision: Feb. 18, 2021

Acts Referred:

- Wild Life Protection Act, 1972 - Section 2, 9, 39, 43, 44, 49B, 50, 51
- Code Of Criminal Procedure, 1973 - Section 41, 439

Hon'ble Judges: Vishal Mishra, J

Bench: Single Bench

Advocate: Nitin Agrawal, Atul Sharma

Final Decision: Allowed

Judgement

Vishal Mishra, J

The applicant has filed this second application u/S.439 Cr.P.C. for grant of bail. The applicant has been arrested on 24.12.2020 in connection with

POR No.4959/2017 Forest Department, District Gwalior (M.P.) registered in relation to the offence punishable u/Ss. 2, 9, 39, 43, 44, 49B, 50 and 51

of Wild Life Protection Act, 1972.

It is alleged by the counsel for the applicant that the first application was rejected on merits by this Court vide order dated 20.01.2021 passed in

M.Cr.C.No.1408/2021. Counsel for the applicant has pointed out that the applicant is a helper on the shop and is working since last 4-5 years as

mentioned in the application but at the time of rejection of the earlier application, application was filed jointly with another application i.e. co-accused

Pan Singh Kushwah, therefore, the arguments advanced by the State counsel that they are working on the shop more than 15 years. The aforesaid

aspect is incorrect. It is submitted that the offence registered under Sections 2, 9, 39, 43, 44, 49B, 50 and 51 of Wild Life Protection Act, 1972 Wild

Act Protection Act wherein the maximum punishment is of seven years. He submits that no further recovery is required to be made by the

prosecution from the applicant. The applicant is a first offender and he is ready to abide by all terms and conditions that may be imposed by this Court.

He has further relied upon the judgment passed by the Hon'ble Supreme Court in the case Arnesh Kumar vs. The State of Bihar and Another,

reported in 2014 (8) SCC 273 and has argued that the Hon'ble Supreme Court has held that the law has laid down in the aforesaid case shall be made

applicable to all such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to

seven years, whether with or without fine. He is ready to comply with the Section 41 of Cr.P.C. and is ready to cooperate in the investigation and as

and when required the applicant will be present before the authorities.

Per contra, learned counsel for the State has opposed the application stating that the investigation is still pending in the matter. The principal accused

Ashish Khandelwal, who is said to be brother of Chandra Prakash Khandelwal (owner of the shop in question), is still absconding and is not

cooperating in the investigation. But the State counsel could not dispute the fact that the applicant is a worker/labour on the shop. He admits the fact

that recovery part is being done by the prosecution. Charge sheet could not be filed as one of the co-accused is still absconding in the matter. The

applicant being first offender is not disputed by the State counsel.

Considering the overall facts and circumstances of the case and also the fact that the applicant is a worker on the shop coupled with the fact that the

applicant is a first offender, this Court deems it appropriate to allow the bail application.

The application is allowed. The applicant is directed to be released on bail on furnishing surety bond of Rs.50,000/- (Rs. Fifty Thousand Only) with one

solvent surety of the like amount to the satisfaction of the Investigation Officer/trial Court, subject to verification that he is first offender, as the case

may be with submission of written undertaking and the applicant will abide by all terms and conditions of the different circulars, orders as well as

guidelines issued by the Central Government, State Government as well as Local Administration for maintaining social distancing, hygiene etc to avoid

Novel Corona Virus (COVID -19) pandemic and he will have to install Arogya Setu App, if not already installed.

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 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 move in the vicinity of complainant party and 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 mark his attendance before the concerned Police Station in the first and third week of every month, till conclusion of

investigation (pending if any) and if charge sheet is being filed, the applicant will mark his presence as per the directions issued by the concerning trial

Court.

8. The applicant will inform the concerned S.H.O. of concerned Police Station about his residential address in the said area and it would be the duty of

the Panel Lawyer to send E-copy of this order to SHO of concerned police station as well as the concerning Superintendent of Police who shall

inform the concerned SHO regarding the same.

Application stands allowed.

In view of the COVID-19, jail authorities are directed that before releasing the applicant, medical examination of applicant shall be undertaken by the

jail doctor and on prima facie, if it is found that he is having the symptoms of COVID-19, then consequential follow up action including the

isolation/quarantine or any test if required, be ensured, otherwise applicant shall be released immediately on bail and shall be given a pass or permit for

movement to reach his place of residence.

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