

(2021) 03 MP CK 0127

Madhya Pradesh High Court (Gwalior Bench)

Case No: Miscellaneous Petition No. 15242 Of 2021

Kalpesh Sakhwar

APPELLANT

Vs

State Of Madhya
Pradesh

RESPONDENT

Date of Decision: March 19, 2021

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 439
- Indian Penal Code, 1860 - Section 34, 294, 323, 324, 326, 506B

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

Bench: Single Bench

Advocate: V.K. Dhakad, Purshottam Tanwar

Final Decision: Allowed

Judgement

S.A.Dharmadhikari, J

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 02/02/2021 by Police Station "Ambah District Morena (M.P.) in connection with Crime No.748/2020 registered

in relation to the offence punishable under Section 323, 324, 294, 506B, 34 and added Section 326 of the IPC.

Allegations against the applicant and co-accused persns in short is that on 25/10/2020 at about 9.00 pm accused persons had kept their motocylce

outside their home by which passage was got obstructed. When the complainant Shailendra asked them to remove the motorcycle and park to

somewhere else, all the accused persons started abusing him. Co-accused Karan Singh, Raj Kumar and Vikas told him that they will not shift the

motorcycle from that place. Thereafter, Shailendra's father Bhagwan Singh, uncle Dhaniram and other relatives came on the spot and stopped the

accused. Co-accused Karan Singh beat Shailendra with axe and blow was given on the head of Shailendra due to which blood started oozing out.

Present applicant Kalpesh beat Shailendra with axe which hit on the left eye. Co-accused Rajkumar beat Dheeraj and Paan Singh with spade on the

head due to which blood started oozing out. Second blow was hit on Paan Singh on his shoulder. Applicant Kalpesh also beat Paan Singh with Lathi.

Co-accused Vikas beat Janak Singh on his head with the help of iron rod. Applicant Kalpesh beat him with Lathi. Co-accused Karan Singh had

beaten Ramswaroop with help of axe on his head. Co-accused persons also beat Ramswaroop with Lathi. Co-accused Raghvendra and Anil have

beaten Dhaniram with Lathi. On the aforesaid basis, crime has been registered.

Learned counsel for applicant submits that he has falsely been implicated in the matter. He is in custody since 02/02/2021. It is submitted that charge

sheet has been filed and no further custodial interrogation is required in the matter. Allegation on the present applicant is of beating Paan Singh,

Shailendra and Janak Singh by means of Lathi which is not a dangerous weapon and all the injuries sustained by them are not dangerous and are not

on the vital part of the body. According to MLC report, they are simple in nature. As such, prima-facie offence under Section 326 of the IPC is not

made out against the present applicant. There is a cross case and complainants themselves are aggressors. The FIR has been lodged as a counter

blast to the cross case. Co-accused Raghuvendra has been enlarged on bail by order of even dated passed in M.Cr.C. No. 12329/2021. It is further

submitted that in view of outbreak of COVID 19, detention of the applicant in already congested prison may be detrimental. The applicant is a

permanent resident of District

Morena (M.P.) and there is no possibility 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. Under these grounds, applicant prays for grant of bail.

Learned Panel Lawyer for the State opposed the application and prayed for its rejection by contending that on the basis of the allegations and the

material available on record, no case for grant of bail is made out.

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.

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 will not seek unnecessary adjournments during the trial; and

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

A copy of this order be sent to the trial Court concerned for compliance. Certified copy as per rules.