

## Shakeel Khan Vs State Of M.P. & Anr

**Court:** Madhya Pradesh High Court (Gwalior Bench)

**Date of Decision:** Sept. 9, 2021

**Acts Referred:** Constitution Of India, 1950 " Article 21

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 " Section 3(1)(va), 3(2)(5), 3(1)(w)(2), 3(2)(5a), 14A(2), 15A

Indian Penal Code, 1860 " Section 376, 506

Code Of Criminal Procedure, 1973 " Section 437, 439

**Hon'ble Judges:** G.S. Ahluwalia, J

**Bench:** Single Bench

**Advocate:** Suraj Bhan Lodhi,, Deeapk Khot

**Final Decision:** Allowed

### Judgement

G.S. Ahluwalia, J

It is submitted by the Counsel for the State that the complainant has been informed about the pendency of this appeal, as required under Section 15-A

of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

Case diary is available.

This fifth appeal has been filed under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against the order

dated 05/02/2021 passed by Special Judge, Atrocities, Shivpuri rejecting the bail application. The fourth appeal has already been dismissed by order

date 13/07/2021 passed in CRA No.3842/2021.

The appellant has been arrested on 31/01/2021 in connection with Crime No.18/2021 registered by Police Station Pohri, District Shivpuri for offence

punishable under Sections 376 and 506 of IPC, Section 3(1)(va), 3(2)(5), 3(1)(w)(2) and 3(2)(5a) of Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act (in short "SC/ST Act").

This repeat appeal has been filed on the ground that the prosecutrix has been examined and she has turned hostile and she has not supported the

prosecution case and the DNA test report has been received, according to which the DNA profile of the applicant was not found in vaginal slide and

other incriminating articles. At present, there is no substantive against the applicant and the Trial is likely to take sufficiently long time and there is no

possibility of his absconding or tampering with the prosecution case.

Per contra, the appeal is vehemently opposed by the counsel for the State. However, after going through the deposition of the prosecutrix as well as

DNA test report, it is fairly conceded that not only the prosecutrix has turned hostile but even the DNA test report does not show the presence of the

DNA of the applicant in the vaginal slide as well as other incriminating articles.

Considered the submissions made by the Counsel for the parties.

The Supreme Court by order dated 23-3-2020 passed in the case of IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS in SUO MOTU

W.P. (C) No. 1/2020 has directed all the States to constitute a High Powered Committee to consider the release of prisoners in order to decongest the

prisons. The Supreme Court has observed as under :

“The issue of overcrowding of prisons is a matter of serious concern particularly in the present context of the pandemic of Corona Virus (COVID

19).

Having regard to the provisions of Article 21 of the Constitution of India, it has become imperative to ensure that the spread of the Corona Virus

within the prisons is controlled.

We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services

Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine which

class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory

could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or

less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.

It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid,

depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is

charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.

Considering the allegations and looking the period of detention, as well as considering the fact that in view of second wave of Covid19 pandemic, it is

also necessary to decongest the jail, and without commenting on the merits of the case, it is directed that the appellant be released on bail, on

furnishing a personal bond in the sum of Rs.1,00,000/- (Rs. One Lac) with one surety in the like amount to the satisfaction of the Trial Court or C.J.M.

or Remand Magistrate (Whosoever is available). The appellant shall also furnish an undertaking that he shall follow all the instructions which may be

issued by the Central Govt./State Govt. or Local Administration (General or Specific) from time to time for combating Covid19.

The Supreme Court in the case of IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS by order dated 7-4-2020 has directed as under :

In these circumstances, we consider it appropriate to direct that Union of India shall ensure that all the prisoners having been released by the

States/Union Territories are not left stranded and they are provided transportation to reach their homes or given the option to stay in temporary shelter

homes for the period of lockdown.

For this purpose, the Union of India may issue appropriate directions under the Disaster Management Act, 2005 or any other law for the time being in

force. We further direct that the States/Union Territories shall ensure through Directors General of Police to provide safe transit to the prisoners who

have been released so that they may reach their homes. They shall also be given an option for staying in temporary shelter homes during the period of

lockdown.

Accordingly, it is directed that before releasing the appellant, the jail authorities shall get the appellant examined by a competent Doctor and if the

Doctor is of the opinion that his Corona Virus test is necessary, then the same shall be conducted. If the appellant is not found suspected of Covid19

infection or if his test report is negative, then the concerned local administration shall make necessary arrangements for sending the appellant to his

house as per the directions issued by the Supreme Court in the case of IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS (Supra), and if

he is found positive then the appellant shall be immediately sent to concerning hospital for his treatment as per medical norms. The appellant is further

directed to strictly follow all the instructions which may be issued by the Central Govt./State Govt. or Local Administration for combating Covid19. If

it is found that the appellant 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 send him to the same jail from where he was released. The appellant is further directed to supply a copy of this bail order to the police

station having jurisdiction over his place of residence.

The other conditions of Section 437, 439 Cr.P.C. shall remain the same.

This order shall remain in force, till the conclusion of Trial. In case of bail jump, or violation of any of the condition(s) mentioned above, this order shall

automatically lose its effect.

In the light of the judgment passed by the Supreme Court in the case of Aparna Bhat & Ors. vs. State of M.P. passed on 18/3/2021 in Criminal

Appeal No. 329/2021, the intimation regarding grant of bail be sent to the complainant.

With aforesaid observations, this appeal is Allowed.