

(2022) 03 MP CK 0022

Madhya Pradesh High Court (Gwalior Bench)

Case No: Miscellaneous Criminal Case No. 12106 Of 2022

Nitin Rathore

APPELLANT

Vs

State Of M.P

RESPONDENT

Date of Decision: March 9, 2022**Acts Referred:**

- Indian Penal Code, 1860 - Section 34, 147, 148, 149, 302
- Arms Act, 1959 - Section 25, 27
- Code Of Criminal Procedure, 1973 - Section 174, 439

Citation: (2022) 03 MP CK 0022**Hon'ble Judges:** Deepak Kumar Agarwal, J**Bench:** Single Bench**Advocate:** Ayush Saxena, B.P.S.Chauhan**Final Decision:** Allowed

Judgement

Deepak Kumar Agarwal, J

This is the Fourth bail application u/S.439 Cr.P.C filed by the applicant for grant of bail. Earlier applications have been dismissed as withdrawn.

Applicant has been arrested on 10.8.2021 by Police Station, Janakganj, Distt. Gwalior, in connection with Crime No.603/2021 for the offence

punishable under Sections 302, 147, 148, 149 of IPC and Sections 25, 27 of the Arms Act.

As per prosecution story, on 3.8.2021 Raheesh Khan gave an information at police Station, Janakganj, Gwalior, that he is doing the job of painting.

Today at 9 pm Girdhari Kushwah, owner of Tulsi Marriage Garden, informed him that his brother Hameed was killed by some unknown person and

his dead-body was lying in tin shed of marriage garden. Afterwards he along with his brother Sameer, father Ajmeri reached there and saw that dead-

body of Hameed was lying in a pool of blood below tin shed in the corner. There were injuries over his body. His father told him that on 2.8.2021 at 2

pm Sunil came to the house and told that Manoj Rathore and Arvind Rathore called him. Two days back deceased Hameed had a quarrel with Manoj

Rathore. He suspected that Arvind Rathore and Manoj Rathore due to animosity killed him. Merg under Section 174 of Cr.P.C. was recorded and

FIR bearing crime No.603/2021 was registered for the offence punishable under Section 302/34 of IPC against Manoj Rathore and Arvind Rathore.

Postmortem was conducted. As per the postmortem, deceased died due to head and chest injuries. Death is homicidal. During investigation,

statements of Ashik Khan and Hameed Khan were recorded. They alleged that accused Manoj Rathore, Arvind Rathore, Nitin Rathore (present

applicant), Sunil Razak and Bony were engaged in scrimmage with the deceased. Meanwhile, Manoj Rathore took out country-made pistol and fired

on the deceased, due to which he fell down. Thereafter, Bony assaulted with hammer on the deceased and then applicant Nitin Rathore, Arvind

Rathore and Sunil Rajak took hammer from Bony and assaulted on the deceased. At the behest of applicant/accused, blood stained clothes were

seized. He was arrested on 10.8.2021. After investigation, charge-sheet has been filed.

Learned counsel for the applicant submits that applicant has been falsely implicated in the case. He is in custody since 10.8.2021. It is further

submitted that in this crime there are only two eye-witnesses, namely Ashik Khan and Hameed Khan. During trial, they have not supported the

prosecution case and declared hostile. Learned counsel has filed copy of the deposition of aforesaid witnesses.

Conclusion of trial will take time. On such premises, learned counsel for the applicant prayed for bail.

Learned counsel for the State opposed the prayer and prayed for dismissal of the application.

Both the Advocates are heard. Case diary perused.

Looking to the facts and circumstances of the case, period of custody and that both the eye-witnesses have not supported the prosecution case, but

without commenting on the merits of the case, this Court is of the opinion that the application should be allowed and by allowing the application it is

ordered that if applicant furnishes bail bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with one solvent surety in the like amount to the

satisfaction of the trial Court, he should be released on bail.

He will present during trial before the trial Court on each and every date.

Application stands allowed and disposed of.

Copy of this order be sent to the trial Court concerned for compliance.

Certified copy as per rules.