

HIGH COURT OF MADHYA PRADESH

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M.Cr.C.No.35434/2019

(Jitendra Parihar Vs. State of M.P.)

Gwalior Bench:

Dated 17/09/2019

Shri Atul Gupta, learned counsel for the applicant.

Shri Kamlesh Kori, learned PL for the respondent No. 1/State.

Heard the counsel for the parties and case diary perused.

The applicant has filed this first bail application u/S.439 Cr.P.C. for grant of bail. The applicant has been arrested on 1/7/2019 by Police Station Dabra City, District Gwalior in connection with Crime No. 358/2019 registered in relation to the offences punishable under Sections 376 D(A), 190 and 506 of IPC of IPC and Sections 5/6 of POCSO Act.

It is the submission of learned counsel for the applicant that false case has been registered against the applicant. Applicant is suffering confinement since 1/7/2019; whereas, charge-sheet has already been filed, therefore, confinement amounts to pretrial detention. It is further submitted that prosecutrix is in extended circle of relationship of applicant. False case has been registered due to some family disputes between the families. It is the submission of learned counsel for the applicant that on 17/4/2019 when alleged incident took place was the day of marriage of applicant's sister Chaina at Village Barka, Tahsil Bhandar, District Datia. He referred the photocopy of marriage card to bolster his submissions and submits that original card has been given to police for investigation purpose. Applicant undertakes to cooperate in trial and that he would not be a source of embarrassment or harassment to the complainant party in any manner. He further undertakes to perform community service.

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Learned counsel for the State on the basis of case diary opposed the prayer made by the applicant.

Considering the submissions advanced by learned counsel for the applicant, the fact situation of the case, but 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/- (Rs. Fifty Thousand only)** with one solvent surety of like amount to the satisfaction of the concerned trial Court.

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 an offence similar to the offence of which he is accused and **applicant would not be any source to embarrassment and harassment to complainant party in any manner in future;**
5. 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 will not move in the vicinity of complainant party in future;**

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8. As per the undertaking and intent of the applicant and looking to the fact that water is depleting day by day and this area is anticipated to come under Zero Day zone, it is imperative that applicant must **install Water Harvesting System or Water Recharge System in their house in which she is residing within two months from today**. Applicant shall seek necessary permission required, if any, in this regard from the concerned departments including Collector and Municipality/Municipal Corporation or District and authorities shall facilitate and cooperate in this regard for installation of water recharge / harvesting system. Applicant shall have to maintain the said system in future on regular basis. After installation of system, applicant shall submit a report and compliance certificate (if required), as well as photographs in this regard before the registry of this Court, which shall be placed before this Court under the caption "Direction".
9. This direction is being given by this Court in peculiar fact situation and looking to the intent and desire of the applicant to do some work for the betterment of Environment and Community. It is earnestly expected that this act of applicant would create an atmosphere of awareness in the public regarding water conservation.
10. It is made clear that violation of any term or condition imposed by this Court would be seen sternly and trial Court shall inform this Court about defaults.

A copy of this order be sent to the District Judge and District Collector as well as trial Court concerned for compliance.

Certified copy as per rules.

**(Anand Pathak)
Judge**

MADHYA PRADESH HIGH COURT
(1) (M.Cr.C.No. 43927/2019)
(Shivkumar Vs. State of M.P.)

Gwalior Bench:
Dated 22/10/2019

Shri V.K.Saxena, learned senior counsel with Shri Manas Dubey, learned counsel for the applicant.

Shri Kamlesh Kori, learned PL for the respondent/State.

Learned counsel for the parties are heard on second bail application filed under Section 439 of the Cr.P.C. First bail application of the applicant stood dismissed as withdrawn vide order dated 26/9/2019.

Applicant is in custody since 16/5/2019 in relation to Crime No.651/2018 registered at Police Station Jaura, District Morena in reference to offences punishable under Section 307,147,148,149,323,294,341,336,324,506,201 of IPC.

It is the submission of learned counsel for the applicant that false case has been registered against the applicant and he is in confinement since 16/5/2019. As per the very narration of story, only allegation against the applicant is that he was on spot and in possession of Mouser Gun. Medical opinion given by doctor creates more confusion than clarity when he says that injury appears to be caused either by hard and blunt object or by firearms. Charge-sheet has already been filed. Confinement amounts to pretrial detention. Co-accused Kalla has already been

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(2) (M.Cr.C.No. 43927/2019)
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extended benefit of bail in M.Cr.C.No. 37964/2019 vide order dated 26/9/2019. Applicant undertakes that he will not move in the vicinity of complainant party and would not be a source of embarrassment or harassment to the complainant party. He further undertakes to perform community service.

Learned counsel for the State opposes the application and prayed for its rejection.

After hearing learned counsel for the applicant, this application is hereby allowed and it is directed that if applicant furnishes a fresh personal bond in the sum of **Rs.50,000/- (Rs. Fifty Thousand Only)** with one surety bond in the like amount to the satisfaction of trial Court and undertakes that he shall appear regularly during the trial and he shall not remain absent without prior leave of the Court, then he shall be released on bail. 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

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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 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 and would not be a source of embarrassment or harassment to the complainant party in any manner.

7. As per the undertaking given by counsel on behalf of the applicant, it is hereby directed that applicant shall **plant 10 saplings (either fruit bearing trees or Neem/ Peepal); alongwith tree guards** or has to make arrangement for fencing for protection of the trees in his vicinity, because it is the duty of the applicant not only to plant the saplings but also to nurture them. "वृक्षारोपण के साथ, वृक्षापोषण भी आवश्यक है।"

He shall plant saplings/ trees preferably of 6-8 ft., so that they would grow into full fledged trees at an early time. For ensuring the compliance, he shall have to submit all the photographs of plantation of trees/ saplings alongwith a report before the concerned trial Court within 30 days from the date of release of the applicant. The progress reports thereafter, shall be submitted by the applicant before the trial Court every month till conclusion of trial.

It is the duty of the trial Court to monitor the progress of the trees because human existence is at stake because of the environmental degradation and Court cannot put a blind fold over any casualness shown by the applicant regarding

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compliance. Therefore, applicant is directed to submit a report regarding progress of the trees and the compliance made by the applicant by placing a short report before this Court every two months (for next six months), which shall be placed under the caption "**Direction**".

Any default on behalf of applicant in plantation or caring of trees shall disentitle the applicant from enjoying the benefit of bail.

The applicant shall be at liberty to plant these saplings/ trees at an place of his choice, if he intends to protect the trees on his own cost by providing tree guards or fencing for which applicant shall have to bear necessary expanses for plantation of the trees and their measures for safeguard.

This direction is made by this Court as a test case to address the Anatomy of Violence and Evil by process of Creation and a step towards Alignment with Nature. The natural instinct of compassion, service, love and mercy needs to be rekindled for human existence as they are innately engrained attributes of human existence.

"It is not the question of Plantation of a Tree but the Germination of a Thought."

A copy of this order be sent to the Court concerned for compliance.

Certified copy as per rules.

(Anand Pathak)
Judge

Gwalior Bench:

Dated:29/11/2019

Shri D.R.Sharma, learned counsel for the applicant.

Shri Naval Kishore Gupta, learned PL for the respondent-State.

Heard learned counsel for the parties and perused the case diary.

This is second bail application under Section 439 of Cr.P.C. on behalf of the applicant. First bail application of the applicant stood dismissed as withdrawn vide order 30/8/2019.

Applicant is in custody since 7/6/2019 in connection with Crime No.13/2019 registered at Police Station Banmore, District-Morena for the offence punishable under Sections 306, 376, 323 of IPC.

It is the submission of learned counsel for the applicant that case is of false implication and he is suffering confinement since 7/6/2019; whereas, charge-sheet has already been filed. Learned counsel for the applicant submits that dying declaration carried out on 3/6/2019 at 6.30 am is non-implicative in nature. Deceased/prosecutrix nowhere referred the name of applicant anywhere. It appears that after marg enquiry, applicant has been fastened with the liability of implication just to exert pressure. Confinement since 7/6/2019 amounts to pretrial detention. Applicant undertakes to cooperate in the trial and keep himself available as and when required by the trial Court. He further undertakes not to move in the

vicinity of the complainant party and would not be a source of harassment and embarrassment to the complainant in any manner and to do some community service as directed by this Court. He prayed for grant of bail.

Learned counsel for the respondent-state opposed the prayer and prayed for its dismissal.

Considering the submissions made by learned counsel for the parties as well as the fact that confinement amounts to pretrial detention, without expressing any opinion on merits of the case, the application filed under Section 439 of Cr.P.C. is allowed. It is directed that applicant shall be released on bail on furnishing a personal bond in the sum of **Rs.50,000/- (Rs. Fifty Thousand Only)** with one solvent surety of the like amount to the satisfaction of the trial Court concerned for his regular appearance before the trial Court concerned on the dates fixed by the Court during the trial.

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.

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4. The applicant will not commit an offence similar to the offence of which he is accused and will not move in the vicinity of prosecutrix and also would not be a source of embarrassment or harassment to the complainant party in any manner;

5. 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;and

7. Further, aforesaid extension of benefit of bail shall be subject to the condition that applicant shall serve the Primary Health Centre, Banmore, District Morena on **every Monday and Tuesday from 9 am to 1 pm** for one year and his role would be to assist the doctors/compounder while serving outdoor patients. **He would not be allowed to move inside the operation theater and private wards and shall not be a source of infection and discomfort to the patients and concerned duty doctors shall ensure this.** In **December, 2020** applicant shall submit a report about the works done by him and suggestions, if any for improvement of the system.

8. This direction is given looking to the age of the applicant so that he can get a chance to assimilate in the main stream. CMHO/Hospital Superintendent, District Morena shall permit the applicant to work in the outdoor patient department only while assisting the ward boys and male nurses to serve the patients. The services of the applicant shall also be utilized in maintaining cleanliness in the building and serving the patients and doing work like First Aid etc., so that applicant may inculcate some basic knowledge of First Aid or Emergency Care of patients which may be helpful for unforeseen exigencies or natural calamities wherein applicant may be helpful as a volunteer.

9. It is made clear that applicant shall not be a source of any

infection to the patients and would confine himself in the work of cleanliness, registration of patients or those works which may not endanger the interest of any patient.

10.This direction is made by this Court as a test case to address the Anatomy of Violence and Evil by process of Creation and a step towards Alignment with Nature. The natural instinct of compassion, service, love and mercy needs to be rekindled for human existence as they are innately engrained attributes of human existence.

11.Any breach of condition or any activity contrary to the interest of patients and public would render the applicant dis-entitled from the relief granted by this Court.

CMHO, District Morena be informed accordingly.

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

Certified copy as per rules.

jps/-

(Anand Pathak)
Judge

Rishi Ahirwar Vs. State of Madhya Pradesh & Anr.

Gwalior Bench Dated: 18/12/2019

Shri Kumar Gaurav Sharma, learned counsel for the applicant.

Shri Aditya Singh, learned PP for respondent/State.

Shri Rajiv Upadhyay, learned counsel for the complainant.

With consent heard finally.

The applicant has filed this first application under Section 439 of Cr.P.C for grant of bail, who has been arrested and is in custody since 8-12-2019 in connection with Crime No.259/2019 registered at Police Station, Sadora, District Morena, for the offence punishable under Sections 354, 457 of IPC and Sections 7/8 of the Protection of Children from Sexual Offences Act, 2012.

It is the submission of learned counsel for the applicant that false case has been registered against him and he is suffering confinement since 8-12-2019. He was Patwari and under the elated feeling he overreached his authority, but now feels that he would correct his ways and would not misuse his position. Although he denied the allegation in *toto*, he learnt the lesson hardway. It is further submitted that both the parties belong to same family, and therefore, it was a case arising out of personal dispute between the family. He undertakes to cooperate in investigation/trial and would not be a source of embarrassment/harassment to the complainant party in any manner. He undertakes to perform community service to purge his guilt, if any. Learned counsel for the applicant on the basis of an

application supported with affidavit submits that he is ready to do community service by way of blood donation. Thus, prayed for bail.

Learned Public Prosecutor for the State as well as learned counsel for the complainant opposed the prayer and prayed for dismissal of the application.

Considering the submissions advanced, looking to the facts and circumstances of the case, but without commenting on the merits of the case, the application is allowed. It is directed that the applicant shall be released on bail on his furnishing personal bond in the sum of **Rs.2,00,000/- (Rupees Two Lac Only)**, with two solvent sureties of the like amount to the satisfaction of the Trial Court concerned.

This order will remain operative subject to compliance of the following conditions by the applicant:-

1. आवेदक स्वयं द्वारा निष्पादित बंद पत्र की समस्त निबंधनो एवं शर्तों का अनुपालन करेगा।
2. आवेदक अन्वेषण/विचारण में प्रकरण एवं निर्देशानुसार सहयोग करेगा।
3. आवेदक मामले के तथ्यों से परिचित किसी भी व्यक्ति को प्रलोभन, धमकी अथवा वचन देने में स्वयं को लिप्त नहीं करेगा, जो कि उसे/उसको ऐसे तथ्यों को न्यायालय या पुलिस अधिकारी से प्रकटीकरण करने से प्रवर्तित करे, जैसी भी स्थिति हो;
4. आवेदक जिस अपराध के लिए दोषी है उस प्रकार का समान अपराध कारित नहीं करेगा।
5. आवेदक विचारण के दौरान अनावश्यक स्थगन की माँग नहीं करेगा।
6. आवेदक विचारण न्यायालय/अन्वेषण अधिकारी की पूर्व अनुमति के बिना भारत नहीं छोड़ेगा। जैसी भी स्थिति हो एवं;
7. एतद् द्वारा यह निर्देशित किया जाता है कि आवेदक 50 पौधों का (फल देने वाले पेड़ अथवा नीम/पीपल) रोपण करेगा तथा उसे अपने आस पड़ोस में पेड़ों की सुरक्षा के लिए बाड़ लगाने की व्यवस्था करनी होगी ताकि पौधे सुरक्षित रह सकें। आवेदक का यह कर्तव्य है कि न केवल पौधों को लगाया जाए, बल्कि उन्हें पोषण भी दिया जाए। **“वृक्षारोपण के साथ, वृक्षापोषण भी आवश्यक है।”** आवेदक विशेषतः 6-8 फीट ऊँचे पौधे/पेड़ों को लगायेगा ताकि वे शीघ्र ही पूर्ण विकसित हो सकें। अनुपालन सुनिश्चित करने के लिए, आवेदक को रिहा किये जाने की

दिनांक से 30 दिनों के भीतर संबंधित विचारण न्यायालय के समक्ष वृक्षों/पौधों के रोपण के सभी फोटो प्रस्तुत करना होंगे। तत्पश्चात्, विचारण के समापन तक हर तीन महीने में आवेदक के द्वारा विचारण न्यायालय के समक्ष प्रगति रिपोर्ट प्रस्तुत की जाएगी।

वृक्षों की प्रगति पर निगरानी रखना विचारण न्यायालय का कर्तव्य है क्योंकि पर्यावरण क्षरण के कारण मानव अस्तित्व दांव पर है और न्यायालय अनुपालन के बारे में आवेदक द्वारा दिखाई गई किसी भी लापरवाही को नजर अंदाज नहीं कर सकता है। इसलिए आवेदक को पेड़ों की प्रगति और आवेदक द्वारा अनुपालन के संबंध में एक रिपोर्ट प्रस्तुत करने के लिए निर्देशित किया जाता है एवं आवेदक द्वारा किये गये अनुपालन की एक संक्षिप्त रिपोर्ट इस न्यायालय के समक्ष प्रत्येक तीन माह में (अगले छः महीनों के लिए) रखी जायेगी जिसे कि "निर्देश " शीर्ष के अंतर्गत रखा जाएगा।

वृक्षारोपण में या पेड़ों की देखभाल में आवेदक की ओर से की गई कोई भी चूक आवेदक को जमानत का लाभ लेने से वंचित कर सकती है।

आवेदक को अपनी पसंद के स्थान पर इन पौधों/पेड़ों को रोपने की स्वतंत्रता होगी, यदि वह इन रोपे गये पेड़ों की ट्री गार्ड या बाड़ लगाकर रक्षा करना चाहता है, अन्यथा आवेदक को वृक्षों के रोपण के लिए तथा उनके सुरक्षा उपायों के लिए आवश्यक खर्च वहन करना होंगे।

इस न्यायालय द्वारा यह निर्देश एक परीक्षण प्रकरण के तौर पर दिए गए हैं ताकि हिंसा और बुराई के विचार का प्रतिकार, सृजन एवं प्रकृति के साथ एकाकार होने के माध्यम से सामाजिक स्थिति स्थापित किया जा सके। वर्तमान में मानव अस्तित्व के आवश्यक अंग के रूप में दया, सेवा, प्रेम एवं करुणा की प्रकृति को विकसित करने की आवश्यकता है क्योंकि यह मानव जीवन की मूलभूत प्रवृत्तियां हैं और मानव अस्तित्व को बनाए रखने के लिए इनका पुनर्जीवित होना आवश्यक है।

"यह प्रयास केवल एक वृक्ष के रोपण का प्रश्न न होकर बल्कि एक विचार के अंकुरण का है।"

As per the submission of counsel for the applicant on the basis of instruction so received, if applicant at all intends to donate blood then he is at liberty to do so at J.A.Hospital, Blood Bank under scheme of "रक्तदान महादान समिति" as per his convenience. It is made clear that it is purely optional and concerned Doctor/Para Medical Staff shall ensure the Health and General Well Being of the applicant and do all necessary prerequisite tests of applicant before taking blood.

The applicant's efforts regarding blood donation are

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appreciated because of his realization of the rising need for blood availability in India where accidents and traumatic cases are rampant. This effort of applicant would give an impetus to blood donation campaign.

It is made clear that this is a voluntary act of applicant which is reflected through duly submitted application and affidavit of relative of applicant.

A copy of this order be sent to the trial Court concerned and Hospital Superintendent, J.A. Hospital Gwalior for information and compliance.

Certified copy as per rules.

**(Anand Pathak)
Judge**

ms/-

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