

(2021) 06 MP CK 0048

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No.27297 Of 2021

Anil Yadav

APPELLANT

Vs

State Of MP

RESPONDENT

Date of Decision : 09-06-2021

Acts Referred:

Constitution Of India, 1950 — Article 21
Code Of Criminal Procedure, 1973 — Section 437, 439
Indian Penal Code, 1860 — Section 147, 148, 149, 302, 452, 460
Arms Act, 1959 — Section 25, 27

Citation : (2021) 06 MP CK 0048

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

Bench : Single Bench

Advocate : Sushil Goswami, Brajmohan Shrivastava

Final Decision : Allowed

Judgement

G.S. Ahluwalia, J

This third application under Section 439 of Cr.P.C. has been filed for grant of bail.

The applicant has been arrested on 25.02.2020 in connection with Crime No.171/2014 registered at Police Station Kotwali Distt. Datia for offence

under Sections 302, 452, 147, 148, 149, 460 of IPC and Section 25/27 of Arms Act.

It is submitted by the Counsel for the applicant, that by order dated 10.09.2018 passed in M.Cr.C. No. 34305/2018, the applicant was granted bail on

furnishing cash surety of Rs.3,00,000/-. It is submitted that thereafter the applicant could not appear before the Trial Court on 26.02.2019 and,

accordingly, his bail bonds were cancelled and the cash surety has been forfeited and warrants of arrest were issued and now the applicant is in jail

from 25.02.2020. It is submitted that the cash surety so deposited by the applicant has already stood forfeited automatically and the applicant would not make any application for withdrawal of the said amount and would never dispute the automatic forfeiture of the cash surety, which was furnished by him on the earlier occasion. It is further submitted that the applicant is in jail for the last more than three and half months. The trial has already reached to the stage of defence evidence. The applicant has learned a lesson and he is ready and willing to furnish a fresh cash surety of Rs.3,00,000/-.

Per contra, the application is vehemently opposed by the Counsel for the State.

Considered the submissions made by the Counsel for the parties through video conferencing.

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.â??

The applicant was earlier granted bail on furnishing cash surety of Rs.3,00,000/- which has already stood forfeited automatically because of absence of the applicant before the Trial Court.

In view of the concessional statement made by the applicant that the applicant is ready and willing to furnish cash surety of Rs.3,00,000/- and

considering the facts and circumstances of the case, one more opportunity is granted to the applicant to remain vigilant in future.

Accordingly, it is directed that the applicant be released on bail, on furnishing fresh cash surety of Rs.3,00,000/- (Rupees Three Lacs Only) to the

satisfaction of the Trial Court or C.J.M. or Remand Magistrate (Whosoever is available). The applicant 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 applicant, the jail authorities shall get the applicant 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 applicant 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 applicant 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 applicant shall be immediately sent to concerning hospital for his treatment as per medical norms. The applicant 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 applicant 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 applicant 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.

It is made clear that single default in appearance before the Trial Court, or in case of registration of new offence, this bail order shall automatically

come to an end and the cash surety so furnished by the applicant shall automatically stand forfeited without any reference to the Court. It is made

clear that the earlier cash surety of Rs.3,00,000/- has stood forfeited automatically.

With aforesaid observations, this application is Allowed.