
(2009) 07 MP CK 0072
In the Madhya Pradesh High Court

Arjun Sahu

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 23-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471

Citation : (2009) 07 MP CK 0072

Hon'ble Judges : U.C Maheshwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

U.C. Maheshwari, J.—Heard.

2. This petition is directed u/s 439 of Cr.P.C. On behalf of the applicant/accused to release him on bail. His first application was dismissed on merits vide order dated 5.2.2008 in M. Cr. C No. 8989/07, with liberty to revive the prayer at subsequent stage after examination of three material witnesses while second application was dismissed as withdraw vide order dated 1.5.2008 in M. Cr. C. No. 3345/08 and third application was dismissed vide order dated 31.7.2008 with a direction to revive the prayer only after examining the witnesses as directed vide order dated 5.2.2008. Accordingly, this petition is preferred under the liberty extended by earlier order.

3. The applicant has been arrested in connection with Crime No. 783/06, registered for the offence u/s 420, 467, 468 and 471r/w Section 120-B of IPC at Police Station Garha and as per averments of the petition he is in custody since 30.3.2007.

4. Shri S.C. Datt, learned Senior Advocate submits that in view of the earlier order of this Court passed in M.Cr.C. No. 8989/07 the material witnesses named in such order Ku. Varsha Tiwari, Rahul Shrivastava and Sharda Barman have already been examined long back and later at the request of the prosecution Ku.

Varsha Tiwari was recalled and again cross-examined on 15.5.2009, accordingly all material witnesses mentioned in earlier order of this Court have been examined. He further said that the applicant has suffered more than two and half years in the custody and trial could not be completed in near future as various witnesses are to be examined. It was also argued that the matter is triable by Judicial Magistrate First Class-I and pending in such Court, who does not have the jurisdiction to award the sentence for more than three years. In such premises, he prayed that in the subsequent circumstance by allowing the petition, applicant be released on bail.

5. Aforesaid prayer is opposed by the Dy. Advocate General saying that looking to the nature of offence and available prima-facie evidence against the applicant and in view of dismissal of his earlier application on merits he does not deserve for grant of bail.

6. Having heard the counsel, on consideration after perusing the earlier order of dismissal of his bail application on merits, the present petition appears to be filed under the liberty extended the applicant to revive the prayer after examination of above mentioned three witnesses. It appears from the proceedings of the trial Court that those three witnesses have been examined, therefore, taking into consideration such subsequent change of the circumstance and also keeping in view the arguments advanced by the counsel, without expressing any opinion on merits of the matter or the depositions of examined prosecution witnesses, this petition is allowed. It is directed that on furnishing a personal bond of Rs. 25,000/- (Rs. Twenty five thousand) along with one surety of like amount to the satisfaction of the trial Court applicant Arjun Sahu be released on bail on following conditions:

(a) that the applicant shall not commit similar offence for which he is facing the prosecution while remaining on bail;

(b) that the applicant shall not directly or indirectly make any 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;

(c) the applicant shall not leave the territory of State of Madhya Pradesh without prior permission of this Court.

7. Petition is allowed as indicated above.

8. C.C. today.