
(2020) 08 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 24575 Of 2020

Kabiruddin Alias Unish

APPELLANT

Vs

State Of M.P.

RESPONDENT

Date of Decision : 04-08-2020

Acts Referred:

Indian Penal Code, 1860 — Section 406, 407, 420
Code Of Criminal Procedure, 1973 — Section 301, 438(2)
Constitution Of India, 1950 — Article 21

Citation : (2020) 08 MP CK 0007

Hon'ble Judges : Vishal Mishra, J

Bench : Single Bench

Advocate : Ankur Maheshwari, Rajesh Shukla, Nitin Sharma, Tapendra Sharma,

Final Decision : Allowed

Judgement

This is first bail application u/S.438 Cr.P.C filed by the applicant for grant of anticipatory bail.

In the wake of unprecedented and uncertain situation due to outbreak of the Novel Corona virus (COVID-19) and considering the advisories issued by

the Government of India, this application has been heard and decided through video conferencing to maintain social distancing. The parties are being

represented by the respective counsels through video conferencing, following the norms of social distancing/ physical distancing in letter and spirit.

Heard on I.A.No.9983 of 2020, an application under Section 301 of Cr.P.C for assisting counsel for the State in the matter.

For the reasons mentioned therein, the application is allowed and Shri Nitin Sharma and Shri Tapendra Sharma, counsel for the complainant are

permitted to assist counsel for the State in the matter.

Applicant is apprehending his arrest by Police Station Raghogarh district Guna, M.P, in connection with Crime No.77 of 2020 registered in relation to the offence punishable u/S.420, 406 and 407 of IPC.

It is submitted by counsel for the applicant that the applicant had taken an amount of Rs.64 lac through RTGS from the complainant, out of which, he returned an amount of Rs.30 lac to the complainant and remaining amount of Rs.34 lac have not been refunded back to him. It is submitted that there

was misappropriation of the fund by the present applicant owing to which, FIR was got registered. It is submitted that as per prosecution, the amount

was taken in the year 2017 and thereafter, FIR was lodged in the year 2020. It is submitted that the applicant is ready to give bank guarantee of the

remaining amount for the satisfaction of the trial court for the anticipatory bail. He is ready to cooperate in the investigation and the will abide with all

the conditions which may be imposed by this court while considering this bail application. Counsel for the applicant has relied upon the judgment

rendered by Hon. Supreme Court in the case of Satishchandra Ratanlal Shah Vs. State of Gujrat and another reported in 2019 (9) SCC 14 8 wherein,

owing to the civil liabilities which has been given the colour of criminal case, the Hon. Supreme Court has considered the case and granted bail in the

matter. He has further shown his willingness to serve the national cause by making contribution of Rs.10,000/-in PM Care Fund and install Arogya

Setu App. Per contra, learned counsel for the State as well as counsel for the complainant have opposed the prayer stating that there are serious

allegation against the present applicant. Offence under Sections 406 and 407 of IPC are made out in the facts of the case. He is not cooperating in the

investigation and has remained absconded for the considerable period.

Counsel for the complainant has no objection for consideration of anticipatory bail if the remaining amount is secured by way of furnishing bank

guarantee.

The Hon'ble Supreme Court 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 Level 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 â?" 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 under trial 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??

Considering the over all facts and circumstances of the case and the fact that the applicant has shown his willingness to give bank guarantee of Rs.35

lac coupled with the alarming situation of Novel Corona Virus (COVID-19) and taking into consideration the directions issued by Hon'ble Surpeme

Court as stated herein above, this Court deems it appropriate to allow this application for grant of anticipatory bail.

Accordingly, this application is allowed. In the event of arrest, the applicant is directed to be released on bail subject to furnishing bank guarantee of

Rs.35 lac within a period of 15 days from today and on furnishing a surety bond in the sum of Rs.50,000/- (Fifty thousand only) with one solvent

surety in the like amount to the satisfaction of arresting officer. The applicant shall deposit Rs.10,000/- in PM CARES Fund having Account

Number : 2121PM20202, IFSC Code: SBIN0000691, SWIFT Code :

SBININBB104, Name of Bank & Branch : State Bank of India,

New Delhi Main Branch within seven working days from the date of release.

The applicant shall submit written undertaking that he will abide by all terms and conditions of the different circulars, orders as well as guidelines

issued by the Central Government, State Government as well as Local Administration for maintaining social distancing, hygiene etc to avoid Novel

Corona Virus (COVID -19) pandemic and he will have to install Arogya Setu App, if not already installed.

This order will remain operative for a period of 30 days 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 shall make himself available for interrogation by a police officer as and when required. He shall further abide by the other conditions enumerated in

sub-Section (2) of Section 438 of Cr.P.C.

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;

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; and

6. The applicant will not leave India without previous permission of the trial Court/Investigating Officer, as the case may be,

7. The applicant has mark his attendance before PS Raghogarh district Guna in the first week of every month till filing of charge sheet or conclusion of trial as the case

may be; and

8. The applicant shall inform the concerned S.H.O. of concerned Police Station about his residential address in the said area and it would be the duty of the Public

Prosecutor to send E-copy of this order to SHO of concerned police station as well as Superintendent of Police, concerned who shall inform the concerned SHO regarding the same.

Application stands allowed and stands disposed of.

Applicant shall install Arogya Setu App in his mobile immediately and would intimate his place of residence to the SHO of concerned Police Station;

where he resides. Applicant further submit the undertaking to the effect that he will abide by the terms and conditions of different circulars, orders as

well as guidelines issued by Central Government, State Government as well as Local Administration for maintaining social distancing, hygiene etc to

avoid Novel Corona Virus (COVIC-19) pandemic.

E- copy of this order be provided to the applicant and E-copy of this order be sent to the trial Court concerned for compliance. It is made clear that E-

copy of this order shall be treated as certified copy for practical purposes in respect of this order.

CC as per rules.