

(2021) 05 MP CK 0047

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No.22736 Of 2021

Kasyum Alias Kayum Khan And Anr.

APPELLANT

Vs

State Of MP

RESPONDENT

Date of Decision : 07-05-2021

Acts Referred:

Constitution Of India, 1950 — Article 21

Code Of Criminal Procedure, 1973 — Section 437, 439

Madhya Pradesh Govansh Vadh Pratishedh Adhiniyam, 2004 — Section 04, 06, 09, 10, 11

Motor Vehicles Act, 1988 — Section 3, 5, 66, 180, 181, 192

Madhya Pradesh Krishik Pashu Parirakshan Adhiniyam, 1959 — Section 4, 6, 9

Prevention Of Cruelty To Animals Act, 1960 — Section 11

Citation : (2021) 05 MP CK 0047

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

Bench : Single Bench

Advocate : Harshwardhan Singh Sisodiya, Prabhakar Kushwah

Final Decision : Allowed

Judgement

G.S.Ahluwalia, J

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

The applicants have been arrested on 16/03/2021 in connection with Crime No.194/2021 registered at Police Station Dehat, Ashok Nagar for offence

punishable under Sections 04, 06, 09, 10, 11 of MP Govansh Vadh Pratishedh Adhiniyam, 2004, Sections 66, 192, 3, 181, 5 & 180 of Motor Vehicles

Act, 1988 and under Sections 4, 6 & 9 of MP Krishak Pashu Parikshan Adhiniyam and Section 11 of Prevention of Cruelty to Animals Act, 1960.

It is submitted by the Counsel for the applicants that the applicant No.1 is the driver of the truck and applicant no.2 is the helper. It is alleged that the

container bearing registration no. RJ 14 GJ3278 was stopped and it was found that total 33 oxen and calves were brutally loaded in the truck. The total cost of animals was assessed to be Rs.20,80,000/-. It is submitted that the applicants are poor persons and they were merely the driver and cleaner of the truck. The applicants have no criminal history and the trial is likely to take sufficiently long time and there is no possibility of their absconding or tampering with the prosecution case. It is further submitted that in the wake of second wave of Covid 19 pandemic, the prayer for grant of bail may be considered sympathetically.

Per contra, the application is vehemently opposed by the Counsel for the State. However, it is fairly conceded by the Counsel for the State that there is nothing in the police case diary to indicate the criminal antecedents of the applicants.

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??

Considering the allegations, as well as considering the fact that in view of second wave of Covid19 pandemic, it is also necessary to decongest the jail,

and without commenting on the merits of the case, it is directed that the applicants be released on bail, on furnishing cash surety of Rs. 1,00,000 (Rs.

One Lac) each to the satisfaction of the Trial Court or C.J.M. or Remand Magistrate (Whosoever is available).

The applicants shall also furnish an undertaking that they 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 applicants, the jail authorities shall get the applicant examined by a competent Doctor and if the

Doctor is of the opinion that their Corona Virus test is necessary, then the same

shall be conducted. If the applicants are not found suspected of Covid19 infection or if their test report is negative, then the concerned local administration shall make necessary arrangements for sending the applicants to their 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 they are found positive then the applicants shall be immediately sent to concerning hospital for their treatment as per medical norms. The applicants are 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 applicants have 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 them in custody and would send them to the same jail from where they were released. The applicants are further directed to supply a copy of this bail order to the police station having jurisdiction over their 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 applicants shall automatically stand forfeited without any reference to the Court.

With aforesaid observations, this application is Allowed.