
(2018) 05 MP CK 0137
In the Madhya Pradesh High Court
Case No : MCRC-15615 OF 2018

Shivam @ Shyam Sundar Sharma

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 21-05-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 147, 148, 149, 302, 307, 323, 325

Citation : (2018) 05 MP CK 0137

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

Bench : Division Bench

Advocate : Anil Mishra, Devendra Chaubey, A.S. Bhadoriya

Judgement

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

The applicant has been arrested on 26.1.2018 in connection with Crime No.750/2017 registered by Police Station Morar, District Gwalior for offence punishable under Sections 307, 302, 147, 148, 149, 323, 325 of IPC.

It is submitted by the counsel for the applicant that according to the FIR as well as the case diary statements of the witnesses the applicant is alleged

to have been armed with an iron rod. This Court by order dated 9.3.2018 passed in M.Cr.C.No.6892/2018 has granted bail to the co-accused Rajesh

Sharma. It is further submitted that the Trial Court has granted bail to the co-accused Anand Sharma, Roshan, Lakhan, Mata Prasad Sharma and Anil

Dubey and the case of the applicant is identical to that of co-accused persons who have been enlarged on bail. It is further submitted that the applicant

undertakes to abide by any condition which may be imposed by this Court and there is no possibility of his absconding or tampering with the

prosecution case.

Per contra, the application is opposed by the counsel for the respondent/State as well as counsel for the complainant. It is submitted by the counsel for

the complainant that the co-accused Rajesh Sharma has been granted bail by this Court. The complainant Ganga Singh Bhadoriya came to know that

in the MLC, which has been prepared by the doctors, there is no mention of his head injury, therefore, he immediately approached the Superintendent

of Police and informed that in fact he had sustained injury on his head and stitches were given. It is submitted that the Superintendent of Police has

referred the matter to the Medical Board. It is further submitted that considering the submissions made by the counsel for the complainant, the Co-

ordinate Bench of this Court who had granted bail to Rajesh Sharma has issued notice for cancellation of bail.

Thus, in nutshell the contention of the counsel for the complainant is that the doctor had not prepared the MLC of Ganga Singh Bhadoriya properly

and they deliberately did not reflect the injury which was sustained by Ganga Singh Bhadoriya on his head.

When a specific question was put to the counsel for the State that whether the report of the Medical Board has been received or not, then it was

submitted by the State Counsel that there is nothing in the case diary to that effect.

Be that as it may.

It is submitted by the counsel for the complainant that the applicant was the member of unlawful assembly who had made a brutal and gruesome

attack killing one person and causing injury to various persons including the ladies and, therefore, the manner in which the offence has been

committed, the applicant does not deserve to be released on bail.

To buttress his contentions, the counsel for the applicant has relied upon the judgment passed by the Supreme Court in the case of Muthuramalingam

& Ors. vs. State represented by Inspector of Police reported in 2017 (1) CCSC 32 (SC).

Similarly, it is further submitted that while granting bail, the Court must consider the allegations. The Court must strike balance between the victim as

well as the accused. To buttress his contentions, the counsel for the applicant has relied upon the judgment passed by the Supreme Court in the case

of Chandrakeshwar Prasad alias Chandu Babu vs. State of Bihar & Anr. reported

in (2016) 9 SCC 443.

When it was enquired from the counsel for the complainant that whether the case of the applicant is at par with that of the coaccused persons who

have been granted bail by the Sessions Court or not, then it was submitted that since the applicant is the brother of the main accused Sonu, therefore,

he was the member of unlawful assembly and he does not deserve to be released on bail.

Considering the fact that five co-accused persons namely Anand Sharma, Lakhan, Rohad, Mata Prasad and Anil Dubey have been granted bail by the

Trial Court and the case of the applicant is more or less on the same footing with that of these co-accused persons, this Court is of the considered

opinion that maintaining the parity, the applicant is also entitled to be released on bail.

Accordingly, the application is allowed. It is directed that the applicant be released on bail on furnishing a personal bond in the sum of Rs. 40,000/-

(Rs. Forty Thousand Only) with one surety in the like amount to the satisfaction of the Trial Court/Committal Court to appear before the Court on the

dates given by the concerned Court.

This order shall remain effective till the end of the trial but in case of bail jump, it shall become ineffective.

Certified copy as per rules.