
(2020) 11 MP CK 0102

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 45245 Of 2020

?Yogesh Tiwari

APPELLANT

Vs

State Of MP

RESPONDENT

Date of Decision : 18-11-2020

Acts Referred:

Constitution Of India, 1950 — Article 21
Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 302

Citation : (2020) 11 MP CK 0102

Hon'ble Judges : Vishal Mishra, J

Bench : Single Bench

Advocate : V.K. Saxena, V.D. Sharma, B.S. Gour

Final Decision : Allowed

Judgement

Vishal Mishra, J

This is first bail application u/S.439 Cr.P.C. filed by the applicant for grant of 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.

Applicant has been arrested on 30.07.2020 by Police Station Bagchini, District Morena (M.P.) in connection with Crime No.161/2020 registered in

relation to the offence punishable u/S. 302 of IPC.

It is submitted by the counsel for the applicant that he has been falsely implicated in the case. He has not committed the offence in any manner. It is

pointed out that it is the case of the accident, wherein, present applicant was driving the vehicle in question and which has hit the deceased who was

going on a motorcycle which has resulted into his death. The incident is said to have taken place on 03.07.2020 at 04:20 in the evening and the FIR of

the same has been lodged on 05.07.2020 i.e. after the delay of two days which clearly goes to show that the FIR is an after thought. Even from the

statements recorded under Section 161 of Cr.P.C it is clear that the accident has taken place which has resulted into the death. As the charge sheet

has already been filed, therefore, there is no further requirement of custodial interrogation of the present applicant. He is ready to abide by all the

terms and conditions that may be imposed by this Court while considering his application for grant of bail and is willing to contribute an amount of

Rs.10,000/- to the High Court Bar Association Fund for the benefits of lawyers during this COVID 19 pandemic scenario.

Per contra, counsel for the State has opposed the application stating that there was an intention of the present applicant to dash the vehicle with the

motorcycle of the deceased just to cause injuries and his death which is clearly seen from the statement of witnesses. This is a second incident.

Earlier there was an altercation between the parties and the present applicant has categorically stated that ^eq>s fd'kuxbUgs Hkh tku ls ekj nwaxk** and thereafter he has turned the vehicle i.e. Ertiga car and has collided the vehicle into the motorcycle of the deceased

which resulted into his death. Counsel for the State has admitted the factum of filing of the charge sheet.

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 Level Committee to consider the release of prisoners in order to decongest the

prisons. The Supreme Court has observed as under :

â??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 overall facts and circumstances of the case and also fact that the death has taken place as a result that the vehicle Ertiga Car has

collided with the motorcycle coupled with the fact that charge sheet has been filed in the matter and without commenting anything on the merits of the

case, this Court deems it appropriate to allow this application, accordingly, the application is allowed. The applicant is directed to be released on bail on

furnishing a personal bond in the sum of Rs.50,000/- (Rs. Fifty Thousand Only) with one solvent surety of like amount to the satisfaction of the

Investigation Officer /trial Court, as the case may be with submission of written undertaking and he shall 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 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 will cooperate in the investigation/trial, as the case may be;

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 gracefully volunteered to donate Rs.10,000/- (Rs. Ten Thousand Only) in the account of the High Court Bar Association, Gwalior

for the purpose of assistance and rehabilitation of those members of the Bar, who are facing financial distress due to Lockdown and restrictive

functioning of the courts owing to ongoing Covid-19 pandemic. This Court has no manner of doubt that the office bearers and the Senior members of

the Bar shall ensure that the donation reaches the rightful and deserving claimants. Let the donation be deposited within seven (7) working days from

the date of furnishing bail.

9. The applicant will 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.

In view of the COVID-19, jail authorities are directed that before releasing the applicant, medical examination of applicant shall be undertaken by the

jail doctor and on prima facie, if it is found that he is having the symptoms of COVID-19, then consequential follow up action including the

isolation/quarantine or any test if required, be ensured, otherwise applicant shall be released immediately on bail and shall be given a pass or permit for

movement to reach his place of residence.

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.