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THE HIGH COURT OF MADHYA PRADESH
MCRC No.18487/2022
(B.P.@ AMRAT SINGH GURJAR VS. STATE OF M.P.)

Gwalior, Dated : 18/04/2022

Shri Rajmani Bansal, learned counsel for the applicant.

Shri Pramod Pachori, learned counsel for the State.

Case diary is available.

It is submitted by the counsel for the applicant that by mistake he has mentioned the date of arrest as 22/02/2022 whereas the applicant has been arrested on 25/03/2022.

Accordingly, this bail application is being considered in the light of the fact that the applicant has been arrested on 25/03/2022.

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

The applicant has been arrested on 25/03/2022 in connection with Crime No.45/2022 registered at Police Station Saraichola, District Morena for offence under Section 34(2) of M.P. Excise Act.

It is submitted by the counsel for the applicant that according to the prosecution case, an information was received from an informer and accordingly, a trap was laid and a car was intercepted. It is alleged that although, the car was surrounded by the police party, but one person succeeded in running away and the co-accused was arrested along with liquor. The co-accused disclosed his name as well as also disclosed the name of the person who had ran away. It is submitted that except the information given by the co-accused about

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the identity of the applicant, there is no other admissible evidence against the applicant to implicate him in the offence. The police has not conducted the Test Identification Parade and the charge-sheet has also been filed.

Per contra, the application is vehemently opposed by the counsel for the State. However, the counsel for the State could not point out as to how the confessional statement made by the co-accused is admissible in the light of Sections 25 and 26 of the Evidence Act. The applicant has no criminal history.

In number of cases, it is being observed that the police is filing charge-sheet against the co-accused persons merely on the basis of confessional statement made by the co-accused. They do not try to collect any substantive evidence against the accused persons. It appears that either the Investigating Officer is deliberately leaving lacuna in the investigation or he does not know the law of evidence.

Be that whatever it may.

It is for the Police Department to consider and upgrade their officers about the law.

In view of the fact that there is no substantive and admissible evidence against the applicant and he has been implicated only on the basis of the confessional statement made by the co-accused, which is not admissible in the light of Sections 25 and 26 of the Evidence Act

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and no TIP of the applicant has been conducted and the police has filed the charge-sheet, and without commenting on the merits of the case, the application is **allowed**. It is directed that the applicant be released on bail on furnishing a personal bond in the sum of **Rs.1,00,000/- (Rupees One Lac)** 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 trial but in case of bail jump, it shall become ineffective.

In the light of the judgment passed by the Supreme Court in the case of **Aparna Bhat and others Vs. State of M.P.** Passed on **18.03.2021** in **Criminal Appeal No. 329/2021**, the intimation regarding grant of bail be sent to the complainant.

Shri Pachori is directed to supply a copy of this order to the Superintendent of Police, Morena who in his turn shall communicate to the D.G.P., State of M.P. to apprise about the lack of knowledge of the law to the police.

Certified copy as per rules.

Pj'S/-

(G.S. Ahluwalia)
Judge