

The High Court Of Madhya Pradesh, Bench At Indore

M.Cr.C No.26558/2021

(Nitin Vs. State of MP)

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INDORE; DATED – 28/07/2021

Heard through video conferencing.

Shri A. K Sethi, learned senior counsel with Shri Dharmendra Gurjar, learned counsel for the applicant.

Shri Aditya Garg, learned counsel for the respondent/State.

With the consent, heard finally.

ORDER

This is first application filed under section 439 of the Cr.P.C arising out of crime no.249/2021 under section 420, 467, 468, 471, 120-B of the IPC registered at police station Khajrana, Indore.

2. Learned senior counsel for the applicant submits that the applicant was arrested on 17.05.2021. the court below rejected the bail application on 31.05.2021. The applicant became Vice Chairman of a housing society on 15.03.2013. The said society was suspended on 15.03.2018. The sale deed was executed on 03.01.2001, wherein it is mentioned that possession has been given to the buyer. The applicant is not encroacher. The applicant is not signatory to the document. The whole allegation is made against the main accused persons namely Babbu and Chabhu. In similar crime No.248/2021, the Sessions Court granted bail to the applicant on 24.05.2021.

3. It is further argued that the applicant himself preferred series of complaints showing encroachment in the society. In addition, he filed an application under section 305 of the Municipal Corporation Act before the competent Court, which was registered as Miscellaneous Judicial Case (M.J.C), which shows that the applicant himself prayed for removing the encroachments. Thus, the applicant may be enlarged on bail.

4. Learned counsel for the respondent/State opposing the bail application submits that no doubt in crime no.248/2021, the applicant

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Nitin got bail. The allegations in crime no.248/2021 and in the present case arising out of crime no.249/2021 are almost similar. However, a huge colony namely 'Nyay Nagar Extension' is artificially divided into two colonies namely 'Radhe Vihar Colony' and 'Saraswati Colony'. There was no documentary basis for formation of these two colonies. There exists no permission by any statutory authority for formation of these two colonies, which were illegally created by diverting the land of an authorised colony namely 'Nyay Nagar Extension'.

5. Learned counsel for the respondent/State submits that in a systematic manner, the applicant connived with the land mafia and co-accused persons thereby land of 'Nyay Nagar Extension' was shown as land of aforesaid two colonies. The said land was sold to new persons by way of notarized documents. Resultantly, the actual owners in whose favour the sale deeds were executed were deprived. By using this *modus operandi*, a sizable number of complainants were deprived to enjoy the fruits of their lands for which they have registered sale deeds in their favour.

6. Learned counsel for the respondent/State further submits that the conduct of accused persons is of a large magnitude. After grant of bail by Court below, several new complaints have been received. Thus, investigation is continuously going on. The applicant is not a signatory to the complaints as projected by the learned Senior counsel for the applicant.

7. In rejoinder submission, learned senior counsel for the applicant urged that although the applicant has not put his signatures in all those complaints wherein encroachment is complained of, the fact remains that the said complaints were preferred by the society and applicant was Vice Chairman of Society between March, 2013 to March, 2018.

8. Heard the parties at length.

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9. The gist of complaints is that Nyay Nagar Extension was a valid colony which was illegally bifurcated into two illegal colonies namely, Radhe Vihar Colony and Sarswati Colony. The argument of counsel for State was not controverted to the extent he stated about creation of two illegal colonies aforesaid which do not have any permission from any statutory authority for such creation. The complaints on which heavy reliance is placed by learned Senior counsel do not contain any such averment that Nyay Nagar Extension itself is diverted into two illegal separate colonies. The complaints were not preferred by the present applicant. If present applicant was Vice Chairman of the *Nayay Vibhag Karmachari Grih Nirman Sahakari Sanstha*, it was incumbent upon the society and the applicant to take serious objection regarding formation of two illegal societies and selling the plots illegally by way of notarized agreements.

10. It appears that land grabbing with the aid of muscleman became order of the day at least at Indore. Sizable number of litigation travelling to this Court in this regard at least suggest that. The actual land owner in whose favour there exists a registered sale deed is either dispossessed or not granted the possession of the land with the aid of land mafia. Thereafter with the aid of muscleman and with the connivance of the office bearers of the society, land is being sold to a third person. Unfortunately, we are witnessing a sizable number of such cases. The nexus of muscleman and key persons involved in such deal is so deep-rooted that normally a common man doesn't dare to prefer a named complaint.

11. The criminal record of present applicant is as under:-

क्र.	थाना	अपराध क्रमांक	धारा
1	खजराना	1010 / 2019	420, भादवि
2	खजराना	1011 / 2019	420 406 भीदवि

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3	खजराना	1240 / 2021	420 467 468 120 बी
4	खजराना	14 / 2020	420 467 468 120 बी
5	खजराना	248 / 2021	420, 467, 468, 471, 120 बी भादवी
6	खजराना	249 / 2021	420, 467, 468, 471, 120 बी भादवी

12. The learned govt. counsel pointed out that the Court below in another crime number granted bail to the applicant on a wrong assumption that complaints regarding encroachment were preferred by the applicant, whereas the said complaints were not preferred by present applicant. The complaints aforesaid do not contain any averment regarding formation of two illegal colonies by giving them two different names in an unauthorized manner. It is also pointed out that investigation in the present crime is still going on. Everyday the aggrieved persons are coming forward and preferring complaints regarding the misdeed of present applicant and the muscleman.

13. Pertinently, the application preferred under Section 307(5) of Municipal Corporation Act preferred by applicant also does not reflect that he raised objection regarding formation of two illegal colonies. The Nyay Nagar Extension must be having hundreds of plots which is evident from applicant's own application preferred under Section 307 of Municipal Corporation Act. If these sizable number of plots were shown in other colony, the minimum expectation was that the Cooperative Society of applicant's will lodge complaint with accuracy and precision before the competent authority. No such complaint is brought to the notice of this Court.

14. The complaints are being preferred on regular basis by the persons, who have been deprived from the fruits of registered sale deed in Nyay Nagar Extension.

15. During the course of hearing, Shri Aditya Garg, learned Govt. Advocate pointed out that since complaints are of almost similar and

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relating to same colony, the police are investigating the matter by treating it to be in the crime numbers which are already registered and not registering every complaint as a different crime number.

16. In view of aforesaid, it is clear that the investigation will take time. Investigation in the instant case is still not over. Considering these aspects, in the opinion of this Court, it is not a fit case for granting bail to the applicant at this stage. Applicant can renew his application after filing of challan against him and after examination of complainant by the Court below.

17. With this observation/liberty, the bail application is rejected.

(Sujoy Paul)
Judge

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