

**HIGH COURT OF MADHYA PRADESH,
PRINCIPAL BENCH AT JABALPUR**

M.Cr.C. No.3556/2019

and

M.Cr.C.No.37749/2018

(Through Video Conferencing)

Mr. Alok Vagrecha, learned counsel for the applicant in M.Cr.C.No.37749/2018.

Mr. Manish Datt, learned Senior counsel with Mr. Siddharth Datt, learned counsel for the applicant in M.Cr.C.No.3556/2019.

Mr. Piyush Bhatnagar, learned Panel Lawyer for the State.

Mr. Ahadullah Usmani, learned counsel for the objector.

Present: Atul Sreedharan J.

ORDER

(20/10/2020)

M.Cr.C.No.37749/2018

This is **First** application on behalf of **Narendra Patel** under section 439 Cr.P.C. for offences under sections 302, 307, 353, 332, 394, 186, 212, 120-B, 201/34 of the IPC read with section 25/27 of the Arms Act, registered vide Crime No.484/2017, at P.S. Kotwali Chhindwara, District Chhindwara.

M.Cr.C.No.3556/2019

This is **Second** application of **Surendra Patel** under section 439 Cr.P.C. for offences under sections 302, 307, 353, 332, 394, 186, 212, 120-B, 201/34 of the IPC read with section 25/27 of the Arms Act, registered vide Crime No.484/2017, at P.S. Kotwali Chhindwara, District Chhindwara.

The applicants herein are real brothers. They are undertrials in the aforesaid case and are presently lodged at Chhindwara Jail. As regards applicant Surendra Patel, this is his second application for bail. The first one having been dismissed as withdrawn by order dated 26/04/2018 in M.Cr.C.No.4/2018.

- 2.** The case arises from a crime of unimaginable proportions whereby an under trial, Iqlakh Qureshi, was murdered in the premises of the District Court, Chhindwara, by three assailants when he was produced before the Ld. Court below on a remand hearing. The applicants herein are not principals in the first degree as they are not the ones who have directly committed the crime but are principals in the third degree, being alleged conspirators or accessories before the fact.
- 3.** As regards applicant Narendra Patel, Ld. Counsel for the State submits that he harboured a motive to kill Iqlakh Qureshi as earlier, deceased Iqlakh Qureshi had attempted to murder Narendra Patel. It was in the case relating to the attempt on the life of applicant Narendra Patel, that Iqlakh Qureshi was being produced before the Ld. Court below as an under trial, that he was murdered. The applicants have already completed more than three years as under trials and as stated hereinabove earlier, the evidence against them is of being involved in the conspiracy to commit the murder of Iqlakh Qureshi. The applicants herein and the deceased Iqlakh Qureshi are stated to belong to the same political party.

4. During the pendency of these applications, the entire nation came under the debilitating grip of the Corona Pandemic, which has affected the functioning of almost all institutions including the judiciary. The trials are unable to progress as physical hearing before the Ld. Courts below has been impeded. Learned counsel for the applicants have sought bail, inter alia on the ground of delay in trial.
5. The prayer has been strongly objected to by Mr. Ahadullah Usmani, Ld. Counsel for the objector and Mr. Piyush Bhatnagar, Ld. Panel Lawyer for the State. Ld. Counsel for the objector and the Ld. Panel Advocate for the State have argued in one voice that the applicants herein are the master minds of the crime, who have guided the main accused(s), and their enlargement on bail would result in them attempting to influence witnesses by fear or by other means.
6. On the last date of hearing, this Court had asked the Ld. Panel Advocate to confirm a newspaper report that the jailer at Chhindwara Jail, where the applicants are lodged, died due to Covid 19 affliction. Today, both, the Ld. Counsel for the objector and the State have submitted that though the said information is true, the situation is under control and now and there are no prisoners in Chhindwara Jail who are afflicted by the pandemic and therefore, there is no necessity to consider the release of the applicants on bail only on that ground. Ld. Counsel for the objector has also stated that if prisoners are going to be enlarged on bail only on account of them contracting the virus, it would result in emptying the jails and releasing dreaded criminals into

the society, who otherwise would not have been eligible for the grant of bail. Ld. Counsel for the objector and the State have further submitted that the health of the applicants can be looked after very well while in jail and any problem can be attended to while they are being held in custody, and a different view ought not be taken as regards the applicants herein and they should be treated at par with the other prisoners presently being held at Chhindwara jail. As regards the apprehended delay in the trial, the Ld. Counsel for the objector has submitted that directions may be given to the Ld. Trial Court to complete the trial under a time bound period.

7. Per contra, Ld. Counsel for the applicants have argued that though it may be true that the inmates of Chhindwara jail, as on date may be free of the corona virus, it is impossible to give an undertaking that it would always remain so as new prisoners are always brought into the jail and experience of the past instances have shown the impossibility in containing the virus or declare any place as completely sterile and free of the virus.
8. This Court has heard the Ld. Counsels for the parties. Looking at the nature of the case, it cannot be said that the apprehensions expressed by the Ld. Counsel for the objector and the State are fanciful or improbable. At the same time, it would also be essential to balance the personal liberty of the applicants, who as per the dictum of law shall be presumed innocent till proven otherwise. Undisputedly, the applicants herein have completed more than three years in judicial custody and the recommencement of the trial against them in the near future

appears to be doubtful. The argument put forth by the Ld. Counsel for the objector and the State that, instead of releasing the applicants on bail, appropriate directions may be given to the Trial Court to conclude the trial under a time bound manner, may have been a proposal worth giving credence to if conditions were normal. In the prevailing circumstances, it may not be possible to examine all the witnesses through video conferencing.

9. Ld. Counsel for the applicants have submitted that the defence may have no objection to cross-examine formal witnesses through video conferencing, who may not be directly relevant in proving a fact in issue or a relevant fact. But as regards those material witnesses, whose testimony directly bear upon a fact in issue or a relevant fact, no defence counsel worth his salt would ever agree to examine them through video conferencing as the counsel for the defence may be sitting in one city, the Judge in his Court and the witness in a third place. Ld. Counsels for the applicants has also stated that as is the experience of both, the Bench and the Bar, that while communicating through video conferencing both sides experience a time lag of two to three seconds for one side to answer a query raised by the other. Ld. Counsel for the applicants have stated that the time lag may be worse in the districts and smaller towns where the internet bandwidth is even lower and the time lag may be more between the question asked by the defence counsel and the answer given by the witness. In such a situation, it may not be possible for the defence counsel to assess whether the delay in answering a question by the material witness was on account of the witness hearing the question belatedly or on

account of the witness thinking on what and how to answer the query.

- 10.** Ld. Counsel for the applicants have also stated that many a times during cross-examination, the succeeding questions asked to a material witness substantially depends upon his demeanour and in the manner in which he responds, including the time taken by the witness to answer the previous question, which is an extremely relevant consideration for the defence counsel to tailor and structure his next question to the witness. The submissions put forth by the Ld. Counsels for the applicants cannot be discarded as a hollow argument but is a probable eventuality which can take place while cross-examining witnesses through video conferencing.
- 11.** Bail and not jail, is still the norm irrespective of how heinous the offence may be, as the presumption is one of innocence of the accused till, he is proven guilty. However, the Courts must, while passing an order on bail, also take into consideration the probability of the accused attempting to suborn material witnesses once he is let out on bail, as that too is a strong probability. Under the circumstances, the Court would have to balance both, the right of the accused against inordinate incarceration as an under trial and ensure that his ability to influence witnesses, once on bail, is curtailed. Merely because a case has generated much heat in the public domain and has been widely discussed in the media cannot be a consideration for the courts while deciding a bail application.

- 12.** The Ld. Counsel for the State has placed before this Court the criminal antecedents of applicants. There are nine cases against applicant Narendra Patel including the case in question. All of them are registered at P.S. Kotwali, District Chhindwara. Of these, five cases are under Ss. 294, 323, 324, 506 IPC along with sections pertaining to constructive liability. In one case, beside the aforementioned sections, S. 326 is also included. One case is under the Gambling Act and one case u/s. 307 IPC. There is one proceeding u/s. 110 Cr.P.C to secure good behaviour from habitual offenders and the ninth, is the case in question. Out of the nine cases, five are of a minor nature. Out of these five cases, four are triable by the Court of the JMFC and one by the Court of Sessions in view of section 326 IPC being one of the offences. The case under the Gambling Act is also triable by the Court of JMFC.
- 13.** As regards applicant Surendra Patel, there are six case against him. Three of these cases are registered at P.S Kotwali, one in P.S. Dehat and two in P.S. Kundipura, all in District Chhindwara. Of these, three cases are u/ss. 295, 323, 324, 506 IPC along with offences of constructive liability and in one case, along with the abovementioned sections, s. 326 is also added. A fourth case is u/s. 279, 337, 338 IPC and 183 and 184 of the Motor Vehicles Act which pertains to negligent conduct. The fifth and the sixth cases involve offence u/s. 302. One of them is of the year 2016 and the other is the case in question.
- 14.** The Ld. Counsel for the State has submitted that keeping the previous antecedents of the applicants in mind, this Court must not grant them the benefit of bail as they are confirmed

recidivists, of compulsive criminal nature. He has also voiced concern that the applicants may influence the witnesses, if granted bail. It is pertinent to mention here that the Ld. Counsel for the State has not mentioned as to how many of these cases against the applicants, allegedly committed by them between 2007 to 2017, have concluded in conviction (if they have concluded), and in how many they have been acquitted.

- 15.** Adding to this, Ld. Counsel for the objector has argued that this court would have to take into cognizance, the social impact of granting bail to persons accused of heinous crimes, as enlarging them on bail would have the effect of lowering the confidence of the judiciary in the eyes of the general public. He has emphasised that the crime was sensational and was commented upon much by the press and the media for the sheer magnitude and brazenness of the crime and that such a crime of this nature had never been committed in a small town like Chhindwara. He has further argued that the manner in which the offence was committed inside the precincts of the Ld. Trial Court goes to reflect the confidence of the applicants and the sheer disdain they have for the law. According to him, the crime that the applicants have been accused of, has terrified the entire city. He has also argued that giving bail to persons only because of the delay in trial would see the prisons being emptied and criminals being let loose on a law-abiding public.
- 16.** This court begs to differ with the proposition put forth by the learned counsel for the complainant/objector. In the hierarchy of justice administration, at no level can the Courts be held hostage

to the shrill screech of public perception. The day that happens, no longer would it be said that the Courts are impervious to influence. If Courts yield to the passive and subliminal opinion of what ought to be done in cases, or who the culprits are, as is expressed with increasing, and sometimes wanton regularity by the ubiquitous “*vox populi*” viz., the print, electronic and social media, the Constitution, the liberty and life of the individual it professes to protect, would be no more valuable than the paper on which it is printed.

17. The object of the criminal justice system has been encapsulated succinctly the Latin maxim “*fiat justitia ruat caelum*” or let justice be done though heavens may fall. Court are to pass orders strictly in accordance with the law and the dictate of the Court’s conscience, unmindful of the consequences. While granting bail, the court must see **(a)** whether the enlargement of the under-trial on bail would result in him attempting to overawe and influence the witness, either by threat of dire consequences or by monetary inducement. **(b)** The probability of the under-trial, upon his release, committing another crime while on bail, would be germane while considering grant of bail to recidivists or repeat offenders. **(c)** That investigation is still in progress and the release on bail of the accused may result in him tempering with material evidence or destroying evidence, so that the same does not fall into the hands of the investigating agency, and **(d)** that, the evidence against the accused is *prima facie* so overwhelming and direct that if enlarged on bail, it may be tempting for him to abscond and evade the process of justice altogether.

18. Briefly, these are the considerations that must weigh in the mind of any court while considering a bail application. However, even these factors may have to be overlooked if the process of trial itself is impeded, for no fault of the accused and there is excessive delay on account of the prosecution being unable to produce the witnesses for whatever reasons, or that the number of witnesses are so large that irrespective of the best efforts by the trial court, the case may not conclude despite the passage several years. In such situations, the courts would have to use their wisdom whereby the liberty of the under-trial can be restored and reasonable conditions, having direct nexus with the jurisprudence relating to bails, can be imposed to ensure that the release on bail of the under-trial does not result in any of the instances mentioned in paragraph 17 *supra*.
19. These conditions may range from the quantum of personal bond and surety, to appearing before the Police periodically and registering his presence and in extreme cases, even asking the under trial to remove himself from the municipal limits of the districts where the trial is taking place and the witnesses are situated. Of course, no rule of thumb can ever be laid down as an indelible proposition which must be followed in every case of bail and the discretion must be left to the Court.
20. Under the circumstances, **the applications are allowed** and it is directed that the **applicants** shall be enlarged on bail upon their furnishing a personal bond in the sum of **Rs.5,00,000/- each (Rupees Five Lacs)** with one solvent surety in the like amount to the satisfaction of the Trial Court.

21. It is made clear that:

- A)** The applicants shall remove themselves from the Municipal Limits of Chhindwara forthwith upon their release and shall reside in Jabalpur till the conclusion of the trial.
- B)** They shall also report before the SHO of PS OMTI once every week after being enlarged on bail. They shall appear before the SHO PS OMTI for the first time on **02.11.2020 and** thereafter on such date set by the SHO, which shall not be more than one week from their previous appearance.
- C)** If the applicants miss a single appearance before the SHO PS OMTI as directed, the State or the objector shall be free to move an appropriate application for the cancellation of the bail order.
- D)** But for attending the trial before the Ld. Trial Court, the applicants shall not enter Chhindwara District without the permission of this Court. In the event the condition is violated, it shall be open to this Court to cancel the bail granted to the applicants.
- E)** The applicants shall not attempt directly or indirectly, to contact the witnesses of this case. Any attempt to do so may result in the cancellation of this bail granted to them upon an application by the witness, complainant, or the State.

The jail authorities shall have the applicants checked by the jail doctor to ensure that they are not suffering from the corona virus and if they

Certified copy as per rules.

SS

Digitally signed by SHYAMLEE SINGH SOLANKI
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