THE HIGH COURT OF MADHYA PRADESH

MCRC-40677-2020

(GAMBHIR SINGH CHOUDHARY VS STATE OF M.P.)

Jabalpur, Dated 01.12.2020

Shri Varun Tankha, learned counsel for the applicant.

Shri Pushpendra Yadav, learned Additional Advocate General with Shri Prakash Gupta, Panel Lawyer for the respondent/State.

Shri Rajesh Kumar Chand, learned counsel for the Objector.

At the outset, learned Additional Advocate General submits that the cost imposed on 27.11.2020 for not filing the reply objection in time, may be waived. And, in the alternative, it is submitted that if this Court is not inclined to waive the cost, the State Government may be permitted to withdraw the written objection filed against for grant of anticipatory bail and the matter may be heard on the basis of case diary.

We do not appreciate such a stand taken by learned Additional Advocate General. There is no affidavit filed by the Competent Authority to withdraw the written objection. Therefore, prayer for waiving the cost as well as for withdrawing the written objection stands rejected.

Let cost so imposed be deposited within a period of 7 days from today, failing which the office is directed initiate action against the erring officials.

Heard.

Applicant, a septuagenarian, apprehending arrest in respect of a case registered at Police Station Chaurai District Chhindwara vide Crime No.590/2020 for the offences punishable under Sections 147, 148, 186, 188, 269, 270, 307, 353, 355 & 332 of IPC read with Section 51(b) of the Disaster Management Act, 2005, has filed this application under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail.

Taking us through FIR, it is contended on behalf of the applicant that the offences are registered against as many as 22 persons alleging that on 10.09.2019 in furtherance to *Dharna* (protest), the accused persons attempted to breach police barricade and while being prevented from doing so by the Station House Incharge, Police Station Chaurai and other police personnel, the agitating crowd encircled the Sub-Divisional Magistrate, whereon one member of the crowd namely Bunty Patel caught hold of the neck of the SDM and smeared his face with black ink and manhandled him while other accused persons abetted. In the course of which, Tahsildar Rai Singh Kushram sustained injuries. It is contended that the alleged offence is cooked up against the applicant who is falsely implicated. It is contended that as evident from the FIR, the applicant had no active role, nor the same is

attributed but is roped in with said Bunty Patel who has been released on bail. It is urged that as many as 19 co-accused are released on bail. It is urged that being law abiding citizen if the applicant is arrested in respect of false accusation, the same will tarnish his image irreparably. It is further contended that the applicant will abide by all such conditions as determined by the Court.

The application is opposed by the State. It is stated that the applicant was party to unlawful assembly who were violent in causing injuries to Government officer on duty. It is further contended that the applicant has criminal antecedent as previously he was proceeded under Section 151 CrPC vide Crime No.92/2017 and under Sections 107 & 116 CrPC vide Crime No.134/2000. It is urged that being a habitual offender, the applicant cannot be admitted to anticipatory bail. Objector/complainant also joins the State in opposing the application.

Considered rival submissions and perused the record.

Evidently, the main accusation, as borne out from the FIR, is against co-accused Bunty Patel. There is no iota of allegation against the applicant except that he was the part of alleged unlawful assembly which, as alleged, turned righteous as per the FIR. It is also not disputed by the State, nor the Objector that co-

accused Bunty Patel is already admitted to bail along with other 19 accused persons.

In view whereof and further taking into consideration the fact that the applicant is septuagenarian, an Ex-MLA and there is no possibility of his absconding, but expressing any opinion on the merits of the case, he is admitted to anticipatory bail. Therefore, in the event of his being put to arrest, the Arresting Officer/Investigating Officer shall forthwith release him on his furnishing a personal bond of Rs.50,000/- (Rupees Fifty Thousand) and one surety of close relative in like nature and an undertaking that he will assist in investigation. If the applicant fails to do so, the effect of this order shall be vacated automatically.

The applicant-accused is directed to join the investigation immediately and fully co-operate with the investigation. He shall further abide by the other conditions enumerated in sub-section (2) of Section 438 of CrPC.

In the result, the application is **disposed of** finally in above terms.

(Sanjay Yadav)
Acting Chief Justice

(Sujoy Paul)
Judge

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