IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR

ON THE 29th OF JANUARY, 2024

MISC. CRIMINAL CASE No. 56928 of 2023

BETWEEN:-

RAKESH S/O SHRI GABBAR SINGH, AGED ABOUT 35 YEARS, GRAM GAJAPUR THANA PICHHOR DISTRICT GWALIOR M.P. (MADHYA PRADESH)

.....APPLICANT

(SHRI PRASHANT SHARMA AND SMT. UMA KUSHWAH, LEARNED COUNSEL FOR THE APPLICANT),

AND

THE STATE OF MADHYA PRADESH INCHARGE POLICE STATION THROUGH POLICE STATION ANTARI DISTRICT GWALIOR M.P. (MADHYA PRADESH)

.....RESPONDENTS

(SHRI R.K. AWASTHI, LEARNED PP),
(SHRI VINOD KUMAR SHARMA, LEARNED COUNSEL FOR THE RESPONDENT [COMP].

This application coming on for HEARING this day, the court passed the following:

ORDER

Heard on I.A.No.1511/2024 U/s 301(2) of Cr.P.C for permission to assist Public Prosecutor in the matter.

For the reasons mentioned therein, the application is allowed and Shri Vinod Kumar Sharma, learned counsel and his associates are permitted to assist PP in the matter.

This first bail application has been filed by applicant under section 439 of the Code of Criminal Procedure, 1973 for grant of bail in connection with

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Crime No.157/2023 registered at Police Station Antri Distt. Gwalior (M.P.) for the offence punishable under Section 302, 294, 34 of IPC.

As per the case of prosecution, Amit Singh along with his brothers Ashok Singh and Jahendra Singh reported to PS Antri that on 17.07.2023 around 12.45 PM, he, Balvir, Ashok and Jahendra were purchasing near Kachhari Tiraha. Suddenly, Laxman Baghel armed with pistol, Rakesh Baghel armed with Katta and Chhotu came there and started abusing Balvir. Balvir objected to abuses. Laxman fired at Balvir by his pistol. Balvir entered the shop. Laxman again fired at Balvir. The bullet hit on head of Balvir, he fell down. Laxman informed someone on phone that he had killed Balvir. Two other persons were also there, who were abusing. Thereafter, all the five persons fled away. On such allegations, PS Antri registered FIR at Crime No.157 of 2023 for offence punishable Us 302, 294 and 34 of IPC. Postmortem examination was conducted on the dead body of Balvir. Medical officer opined that Balvir had died due to shock and hemorrhage as a result of injury caused by fire arm and the death is homicidal. Statements of witnesses have been recorded. Applicant was arrested on 30.11.2023. One country made gun (katta) was seized at his instance. Initially, final report was submitted against accused Laxman and Chhotu Kamariya keeping the investigation pending against applicant Rakesh Baghel under Section 173(8) of Cr.P.C. As per status report dated 18.01.2024, complicity of applicant Rakesh Baghel was found out, therefore, final report, will be submitted against him shortly.

Learned counsel for the applicant, in addition to the grounds mentioned in the application, submits that the applicant has falsely been implicated in the matter by brothers of deceased. The FIR was lodged by them after delay of four hours. Learned counsel referring to the statement of Laxmi, sister of

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Laxman Baghel recorded on 06.08.2023 contends that initially, Laxmi, who is eye witness and sister of Laxman had stated that only accused Laxman Baghel was present on spot and he had killed Balvir Singh for the reason that she had an affair with Balvir. Laxman was against their relationship. Learned counsel further contends that in the initial investigation, all the independent witnesses, of the place of incident, have stated that Laxman Baghel and Chhotu Kamaria were present on spot. None of them had alleged that the applicant was also present on the spot. Later, in further investigation in their supplementary statement, the related witnesses have alleged presence of applicant on the spot of incident. Learned counsel further contends that even if allegations are taken on face value. no overt act i.e. exhortation or firing is attributed to the applicant. Therefore, mere presence is not sufficient to implicate the applicant. Learned counsel further submits that the applicant is agriculturist. He has family to look after. He is sole bread earner of the family. He is permanent resident of Pichhore distt. Gwalior. There is no likelihood of his absconsion or tampering with the evidence. No further custodial interrogation is required in the matter. The trial would take time to complete. Therefore, the applicant may be extended the benefit of bail.

Per contra, learned counsel for the respondent/State ably assisted by learned counsel for the complainant opposes the bail application on the ground of gravity of alleged offence citing criminal history of six cases against the applicant. He submits that considering criminal background of applicant, likelihood of threatening of witnesses by the applicant cannot be ruled out. Therefore, he may not be released on bail.

In reply, learned counsel for the applicant submits that in major offence

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punishable U/s 302 of IPC, the applicant has already been acquitted and in rest of the cases, he is on bail. He has never been convicted.

Heard learned counsel for the parties and perused the case diary.

Considering the arguments advanced by both the parties and overall circumstances of the case, but without commenting on merits of the case, this Court is inclined to release the applicant on bail. Thus, the application is allowed.

Accordingly, it is directed that applicant **Rakesh** shall be released on bail in connection with Crime No.157/2023 registered at Police Station Antri Distt. Gwalior (M.P.) for the offence punishable under Section 302, 294, 34 of IPC, upon furnishing a personal bond in the sum of **Rs. 1,00,000/- (Rs. One lac Only) with two solvent sureties of Rs.50,000/- each** to the satisfaction of the Trial Court, for compliance with the following conditions, :**(For the sake of convenience of understanding by accused and surety, the conditions of bail are also reproduced in Hindi as under):-**

(1) Applicant shall remain present on every date of hearing as may he directed by the concerned court;

(1) आवेदक संबंधित न्यायालय के निर्देशानुसार सुनवाई की प्रत्येक तिथि पर उपस्थित रहेगा।

(2) Applicant shall not commit or get involved in any offence of similar nature;

(2) आवेदक समान प्रकृति का कोई अपराध नहीं करेगा या उसमें सम्मिलित नहीं होगा।

(3) Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them/him/her from disclosing such facts to the Court or to the police officer;

(3) आवेदक प्रकरण के तथ्यों से परिचित किसी व्यक्ति को प्रत्यक्ष या अप्रत्यक्ष रूप से

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प्रलोभन, धमकी या वचन नहीं देगा, जिससे ऐसा व्यक्ति ऐसे तथ्यों को न्यायालय या पुलिस अधिकारी को प्रकट करने से निवारित हो।

(4) Applicant shall not directly or indirectly attempt to temper with the evidence or allure, pressurize or threaten the witness;

(4) आवेदक प्रत्यक्ष या अप्रत्यक्ष रूप से साक्ष्य के साथ छेडछाड करने का या साक्षी या साक्षियों को बहलाने–फुसलाने, दबाव डालने या धमकाने का प्रयास नहीं करेगा।

(5) During trial, the applicants shall ensure due compliance of provisions of Section 309 of Cr.P.C. regarding examination of witnesses in attendance;

(5) विचारण के दौरान, उपस्थित गवाहों से परीक्षण के संबंध में आवेदक धारा 309 दं.प्र.सं. के प्रावधानों का उचित अनुपालन सुनिश्चित करेगा।

(6) The applicant shall mark his presence in the first week of every month before SHO, PS Antri Distt. Gwalior till conclusion of trial.

This order shall be effective till the end of trial. However, in case of breach of any of the precondition of bail, the trial Court may consider, on merits, cancellation of bail without any impediment of this order.

The trial Court shall get these conditions reproduced on the personal bond by the accused and on surety bond by the surety concerned. If any of them is unable to write, the scribe shall certify that he had explained the conditions to the concerned accused or the surety.

C.C. as per rules.

(SANJEEV S KALGAONKAR)
JUDGE

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