IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 2nd OF FEBRUARY, 2024

MISC. CRIMINAL CASE No. 4087 of 2024

BETWEEN:-

SHUBHAM S/O DEVRAM ADANIYA, AGED ABOUT 23 YEARS, OCCUPATION: LABOUR, R/O: PANCH MAHUA SANJAY NAGAR TEHSIL SIMROL, DIST. INDORE (MADHYA PRADESH)

.....APPLICANT

(MR. BHAGIRATH KURI - ADVOCATE)

AND

THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THROUGH P.S. SIMROL, DIST. INDORE (MADHYA PRADESH)

.....RESPONDENT

(MS. VARSHA SINGH THAKUR - GOVERNMENT ADVOCATE)

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

ORDER

Heard on I.A. No.1639 of 2024, which is an application for taking additional documents on record.

2. The aforesaid documents may be relevant for proper adjudication of the case, therefore, the I.A. is allowed and the said documents are taken on record.

3. Applicant has filed this third bail application under Section 439 of the Code of Criminal Procedure, 1973 on behalf of the applicant for grant of regular bail relating to Crime No.401/2022 registered at P.S. Simrol, District

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Indore (M.P.) for commission of offence punishable under Sections 302, 307 and 34 of IPC. He is in jail since 23.09.2022.

4. His earlier bail application was dismissed on merit by this Court vide order dated 12.05.2023 passed in MCRC No.19556/2023.

5. As per the prosecution story, complainant Mamta Patel lodged an FIR on 19.09.2022 at P.S. Simrol, District Indore by stating that on the last night at about 12.30 to 1.00 A.M. while her brother Antar Singh was sleeping on the roof, she heard some noise of dumper and went near the dumper along with her father Bhanvar Singh. At that time, S.I. Savle told his father that "why you are coming here, you should go from here." At that time present applicant along with Lekhraj, Rajat and Subhash came there and they threw a burning bottle upon her father Bhanvar Singh, due to which he sustained various injuries and during the treatment Bhanvar Singh died. Accordingly, a case has been registered.

6. Learned counsel for the applicant submits that applicant is innocent person and he has been falsely implicated in this matter. Applicant is in jail since 23.09.2023. His earlier bail application was dismissed on merit, thereafter, prosecution has examined six witnesses. FSL report has been received, which is not supporting the case of prosecution. There is material contradictions and omissions in the statement of prosecution witnesses, who have been examined before the trial Court. Neither name of present applicant is mentioned in the FIR nor found in the dying declaration of the deceased. Applicant is a permanent resident of District Indore. Final conclusion of trial will take considerable long time. Under the above circumstances, prayer for grant of bail may be considered on such terms and conditions, as this Court deems fit and proper.

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7. Per-contra, learned counsel for respondent/State opposes the bail application and prays for its rejection by submitting that applicant's earlier bail application has been dismissed on merit after considering all the facts and circumstances of the case, therefore, he is not entitled to be released on bail.

8. Perused the case diary as well as the impugned order of the court below.

9. Considering all the facts and circumstances of the case, arguments advanced by counsel for the parties, nature and gravity of allegation as also taking note of the fact that applicant's earlier bail application was dismissed on merit, after that prosecution has examined six witnesses namely Mamta Patel (PW-1), Pushpendra (PW-2), Amrita Bai (PW-3), Anter Singh (PW-4) and Sandeep Patel (PW-6). From perusal of the statement of all these witnesses, it reveals that all these witnesses have categorically deposed regarding the presence of applicant on the spot at time of incident. All these are the material witnesses. They have categorically stated in their statement that present applicant along with other co-accused persons poured petrol / oil upon deceased Bhanvar Singh and set him on fire, due to which deceased sustained fatal injuries and during the treatment he died. In the dying declaration also deceased has mentioned the name of present applicant that applicant poured oil upon him and set him on fire, therefore, evidence of all these witnesses are crystal clear. There is cogent evidence available on record against the applicant regarding the aforementioned offence and his active participation in the incident. So far as the FSL report is concerned, the same may be considered at that time of final adjudication of this case.

10. In view of the circumstances, without commenting upon the merits of

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the case, this Court is not inclined to grant bail to the present applicant.

11. Accordingly, the present applicant filed under Section 439 of Cr.P.C. is hereby dismissed.

Certified copy as per rules.

(ANIL VERMA)
JUDGE

Anushree

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