

1 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.47332/2021
Gaurav Yadav Vs. State of M.P.

Gwalior, Dated:20/10/2021

Shri Avinash Kulshrestha, Advocate for applicant through video conferencing.

Shri R.K. Awasthy, Public Prosecutor for respondent/State.

Case diary is available.

This third application under Section 439 of Cr.P.C. has been filed for grant of bail. Second application was dismissed as withdrawn by order dated 7/12/2018 passed in M.Cr.C. No.48952/2018.

The applicant has been arrested on 7/5/2017 in connection with Crime No.231/2017 registered at Police Station Kotwali Morena for offence under Section 392 of IPC and Sections 11, 13 of the MPDVPK, Act.

It is submitted by the counsel for the applicant that although the first bail application of the applicant was dismissed on merits by order dated 23/10/2018 passed in M.Cr.C. No.41662/2018, but the applicant is in jail from 7/5/2017. Although some of the witnesses have been examined, but he is in jail for the last more than four years and the trial has not come to an end. To substantiate his submissions, the counsel for the applicant has also filed copy of the order-sheets of the Trial Court to show that the witnesses are not appearing.

Per contra, the application is vehemently opposed by the

2 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.47332/2021
Gaurav Yadav Vs. State of M.P.

counsel for the State. However, the counsel for the State could not point out any valid reason for delay in trial and non-appearance of the police witnesses.

Heard learned counsel for the parties.

According to the order-sheets of the Trial Court, on 4/10/2018 a bailable warrant was issued against prosecution witness Satish Goyal and summons were issued against Naresh Sharma, ASI T.D. Shukla and Town Inspector Jang Bahadur Singh. The next order-sheet which has been filed by the applicant is dated 28/11/2019. According to this order-sheet also, the prosecution witnesses were absent. The warrant of arrest issued against Jang Bahadur and bailable warrant issued against Naresh Sharma, who both are police personnel, were received back unserved. Thereafter, the case was taken up on 9/1/2020 and on the said date also the bailable warrant issued against Naresh Sharma and warrant of arrest issued against Jang Bahadur were received back unserved. On 6/2/2020 although the prosecution witness Naresh Sharma was present, but the co-accused Bhupesh did not appear and accordingly, his bail bonds were forfeited and warrant of arrest was issued. On 6/3/2020 the warrant of arrest issued against Bhupesh was received back unserved. Thereafter, on account of covid-19 pandemic, the proceedings came to a halt and ultimately by order dated 24/11/2020 the warrant of

3 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.47332/2021
Gaurav Yadav Vs. State of M.P.

arrest was once again issued against the absconding accused Bhupesh. By order dated 9/12/2020 it was observed that the warrant of arrest issued against co-accused Bhupesh was not received back either served or unserved and accordingly, fresh warrant of arrest was issued. On 29/1/2021 again the warrant of arrest issued against co-accused Bhupesh was not received back either served or unserved and accordingly, the case was adjourned to 19/3/2021. On 19/3/2021 a report was submitted that co-accused Bhupesh is detained in Dabra jail in connection with some other case and accordingly, production warrant was issued. Thereafter, on 14/6/2021 and 7/7/2021 fresh production warrants were issued and ultimately on 9/7/2021 the co-accused Bhupesh was produced in execution of production warrant. Thereafter, on 28/7/2021 the case was fixed for examination of prosecution witnesses and bailable warrant of arrest was issued against Naresh Sharma and warrant of arrest was issued against Jang Bahadur. Again on 7/8/2021 the police witnesses did not appear. Under these circumstances, this court is left with no other option but to release the applicant on bail.

Accordingly, it is directed that the applicant shall be released on bail on furnishing cash surety of **Rs.1,00,000/- (Rupees One Lack Only)** or in the alternative on depositing original title-deed(s) [not Rin Pustika] of the immovable property worth of more than the

4 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.47332/2021
Gaurav Yadav Vs. State of M.P.

said amount, as directed by the Supreme Court in the case of **Sharo @ Shahrukh Vs. The State of MP** by order dated **06.09.2021** passed in **SLP (Cri) No. 6321/2021** to the satisfaction of the Trial Court/Committal Court to appear before the Court on the dates given by the concerned Court.

This order shall remain effective till the end of trial but in case of bail jump, it shall become ineffective.

It is made clear that single default in appearance before the Trial Court, or in case of registration of new offence, this bail order shall automatically come to an end and the cash surety so furnished by the applicant shall automatically stand forfeited without any reference to the Court.

In the light of the judgment passed by the Supreme Court in the case of **Aparna Bhat and others Vs. State of M.P.** Passed on **18.03.2021** in **Criminal Appeal No. 329/2021**, the intimation regarding grant of bail be sent to the complainant.

Before parting with this order, this Court would like to express its anguish on non-execution ofailable warrants as well as warrants issued against the police personnel themselves. It is really shocking that in spite of the circulars issued by the Police Headquarter dated 30/3/2019 and 3/4/2019 with regard to continuous monitoring of summons /ailable warrants / warrants which are being issued

WWW.LIVELAW.IN
5 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.47332/2021
Gaurav Yadav Vs. State of M.P.

against the police witnesses, the ground staff is not ready to comply the said circulars. The Police Department must realize that speedy trial is the fundamental right of an accused. However, District Morena is projecting a very sorry state of affairs and is not in a position to execute bailable warrants / warrants of arrest issued against its own police personnel. The Police Department cannot take a defence that they were not in a position to trace out their own police personnel who are either in service or who might have retired. Even if a person has retired, still he must be receiving pension and, therefore, the Police Department must be aware of his latest address. Non-execution of summons / bailable warrants / warrants simply indicates that the Police Department is not concerned about the fundamental rights of the citizen of country as well as in adjudication of trials and in spite of various orders passed by this Court as well as the circulars issued by the Police Department, the District Police, Morena is not interested at all in compliance thereof. It is a high time when the Police Department must introspect the negligence of its own police officers.

Accordingly, the Director General of Police, State of M.P., Bhopal is directed to look into the matter and to take serious departmental actions against those erring police officers who have miserably failed in complying the circulars dated 30/3/2019 and

6 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.47332/2021
Gaurav Yadav Vs. State of M.P.

3/4/2019 issued by the Police Headquarter (Crime Investigation Department) Bhopal.

So far as the present applicant is concerned, it is the Police Department only who is responsible for the release of the applicant.

Let a copy of this order be sent to the Director General of Police, State of M.P., Bhopal for necessary information and compliance.

With aforesaid observations, the application is **allowed**.

(G.S. Ahluwalia)
Judge

Arun*

