



**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE G. S. AHLUWALIA
ON THE 29th OF NOVEMBER, 2024**

WRIT PETITION No. 36916 of 2024

NEETESH SHARMA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Ms. Ritu Sharma, Advocate for petitioner.

Shri S.S.Kushwaha, Government Advocate for the respondents/State.

ORDER

This petition, under Article 226 of the Constitution of India, has been filed seeking the following reliefs:

"यहकि, प्रस्तुत याचिका स्वीकार कर निम्नानुसार सहायता प्रदान करने हेतु उपयुक्त रिट आदेश या निर्देश जारी करने की कृपा करें अतः माननीय न्यायालय से प्रार्थना है कि याचिकाकर्ता की ओर से प्रस्तुत याचिका स्वीकार करें –

7.1 यहकि, पुलिस थाना कोतवाली शिवपुरी जिला शिवपुरी म0प्र0 में अपराध क्रमांक 0181/2024 अंतर्गत धारा 294, 506, 507 भादवि दर्ज की गई प्रथम सूचना रिपोर्ट एवं उक्त अपराध से संबंधित समस्त कार्यवाही निरस्त/अपास्त करने व कानून का दुरुपयोग करने वालों व झूठी एफआईआर लिखवाने वालों के खिलाफ सख्त कार्यवाही करने की कृपा करें ।



7.2 यहकि, प्रतियाचिकाकर्ता क्रमांक 1 को यह निर्देशित किया जावे कि उक्त प्रकरण में याचिकाकर्ता द्वारा जो आवेदन तथ्यों के संबंध में प्रस्तुत किये गये थे उसकी न्यायहित में निष्पक्ष जाँच कराई जावे, तत्पश्चात कार्यवाही की जावे ।

7.3 यहकि, अन्य न्यायोचित सहायता याचिकाकर्ता के हित में जोकि माननीय न्यायालय रिट उचित पाते हुये प्रदान करने की कृपा करें ।"

2. It is submitted by counsel for petitioner that respondent No. 2 lodged an FIR against petitioner in Crime No. 181/2024 registered at Police Station Kotwali Shivpuri, District Shivpuri, for offences under Sections 294, 506, and 507 of IPC. It was alleged that complainant is an Advocate by profession and resident of Shivpuri. RCT No. 308/2018 is pending, in which complainant has appeared as counsel for the accused. In the aforesaid RCT, the accused is a resident of Amritsar. On 23.02.2024, petitioner made multiple mobile calls to the complainant and extended threats to his life, also threatening that he should leave the case. As complainant had become apprehensive, therefore, he did not immediately lodge the report. On 11.03.2024, petitioner again threatened that complainant should not appear for accused and also tried to pressurize him for a compromise. The aforesaid RCT was fixed for 19.03.2024 for recording of evidence of complainant. On that date, he was standing in front of SDM Court along with Arun Sharma, Jai Goyal, Vikas Singhal and Yogesh Tiwari. At that time, petitioner deboarded from his Car, insisted that the complainant should leave the case and claimed that he had dealt with many Advocates and complainant would not be in a position to cause any damage to him. When complainant



informed him that he is working as a professional and has nothing personal against the petitioner, then petitioner started abusing him in the name of his mother and sister and stated that if complainant would not leave the case, he would be killed and would be falsely implicated under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.

3. Challenging the FIR lodged by complainant, it is submitted by counsel for petitioner that in view of the fact that petitioner was not present on the spot and was in Hospital treating patients, the FIR is false. To buttress his contentions, petitioner has also filed some photographs to show that he was standing outside the Hospital premises.

4. Heard learned counsel for the petitioner.

5. The moot question for consideration is whether this Court can discharge the petitioner by accepting his defence of plea of alibi or not ?

6. The Supreme Court in the case of **Vijay Pal v. State (Govt. of NCT of Delhi)**, reported in **(2015) 4 SCC 749** has held as under :

25. At this juncture, we think it apt to deal with the plea of alibi that has been put forth by the appellant. As is demonstrable, the trial court has discarded the plea of alibi. When a plea of alibi is taken by an accused, burden is upon him to establish the same by positive evidence after onus as regards presence on the spot is established by the prosecution. In this context, we may profitably reproduce a few paragraphs from *Binay Kumar Singh v. State of Bihar*: (SCC p. 293, paras 22-23)

“22. We must bear in mind that an alibi is not an exception (special or general) envisaged in the Penal Code, 1860 or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration (a) given under the provision is worth reproducing in this context:



‘(a) The question is whether *A* committed a crime at Calcutta on a certain day. The fact that, on that date, *A* was at Lahore is relevant.’

23. The Latin word *alibi* means ‘elsewhere’ and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of *alibi*. *The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi.*”

(emphasis supplied)

The said principle has been reiterated in *Gurpreet Singh v. State of Haryana*, *Sk. Sattar v. State of Maharashtra* and *Jitender Kumar v. State of Haryana*.

7. The Supreme Court in the case of **S.K.Sattar v. State of Maharashtra**, reported in (2010) 8 SCC 430 has held as under :



35. Undoubtedly, the burden of establishing the plea of alibi lay upon the appellant. The appellant herein has miserably failed to bring on record any facts or circumstances which would make the plea of his absence even probable, let alone, being proved beyond reasonable doubt. The plea of alibi had to be proved with absolute certainty so as to completely exclude the possibility of the presence of the appellant in the rented premises at the relevant time. When a plea of alibi is raised by an accused it is for the accused to establish the said plea by positive evidence which has not been led in the present case. We may also notice here at this stage the proposition of law laid down in *Gurpreet Singh v. State of Haryana* as follows: (SCC p. 27, para 20)

“20. ... This plea of alibi stands disbelieved by both the courts and since the plea of alibi is a question of fact and since both the courts concurrently found that fact against the appellant, the accused, this Court in our view, cannot on an appeal by special leave go behind the abovenoted concurrent finding of fact.”

36. But it is also correct that, even though the plea of alibi of the appellant is not established, it was for the prosecution to prove the case against the appellant. To this extent, the submission of the learned counsel for the appellant was correct. The failure of the plea of alibi would not necessarily lead to the success of the prosecution case which has to be independently proved by the prosecution beyond reasonable doubt. Being aware of the aforesaid principle of law, the trial court as also the High Court examined the circumstantial evidence to exclude the possibility of the innocence of the appellant.

8. The Supreme Court in the case of **Binay Kumar Singh v. State of Bihar**, reported in (1997) 1 SCC 283 has held as under:

22. We must bear in mind that an alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration (a) given under the provision is worth reproducing in this context:



“The question is whether *A* committed a crime at Calcutta on a certain date; the fact that on that date, *A* was at Lahore is relevant.”

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Thus, it is clear that so far as defence of plea of *alibi* is concerned, it is required to be proved by leading cogent evidence and it cannot be proved by preponderance of probabilities. It is a disputed question of fact that cannot



be adjudicated by the Court while exercising power under Article 226 of the Constitution of India.

9. It is next contended by counsel for petitioner that the FIR is nothing but a misuse of advocacy.

10. Considered the aforesaid submission.

11. If an Advocate is threatened merely because he has accepted a brief on behalf of the accused, then it would certainly amount to interference with the professional life and duties of the Advocate. Generally, Advocates represent the cause of their litigants, and personally, they do not have any interest in the case. Under these circumstances, if an Advocate is threatened merely because he has appeared in a case for his client, then lodging of an FIR for such conduct cannot be said to be a misuse of advocacy.

12. Even otherwise in the light of judgments passed by the Supreme Court in the cases of **XYZ v. State of Gujarat** reported in (2019) 10 SCC 337, **State of Tamil Nadu Vs. S. Martin & Ors.** reported in (2018) 5 SCC 718, **Ajay Kumar Das v. State of Jharkhand**, reported in (2011) 12 SCC 319, **Mohd. Akram Siddiqui v. State of Bihar** reported in (2019) 13 SCC 350, **State of A.P. v. Gourishetty Mahesh** reported in (2010) 11 SCC 226, **M. Srikanth v. State of Telangana**, reported in (2019) 10 SCC 373, **CBI v. Arvind Khanna** reported in (2019) 10 SCC 686, **State of MP Vs. Kunwar Singh** by order dated 30.06.2021 passed in Cr.A. No.709/2021, **Munshiram v. State of Rajasthan**, reported in (2018) 5 SCC 678, **Teeja Devi v. State of Rajasthan** reported in (2014) 15 SCC 221, **State of Orissa v. Ujjal Kumar Burdhan**, reported in (2012) 4 SCC 547, **S. Khushboo v. Kanniammal** reported in (2010) 5 SCC 600, **Sangeeta Agrawal v. State of U.P.**, reported



in (2019) 2 SCC 336, **Amit Kapoor v. Ramesh Chander** reported in (2012) 9 SCC 460, **Padal Venkata Rama Reddy Vs. Kovuri Satyanarayana Reddy** reported in (2012) 12 SCC 437 and **M.N. Ojha v. Alok Kumar Srivastav** reported in (2009) 9 SCC 682, this Court can quash the proceedings only if the uncontroverted allegations do not make out an offence.

13. Considering the totality of facts and circumstances of the case, the court is of the considered opinion that no case is made out warranting interference as allegations made in FIR do make out a cognizable offence.

Accordingly, petition fails and is, hereby, **dismissed**.

(G.S. AHLUWALIA)
JUDGE

(and)