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JEETENDRA

v.

STATE OF MADHYA PRADESH & ANR.

(Criminal Appeal No. 408 of 2020)

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MARCH 18, 2020

[S. A. BOBDE, CJI, B. R. GAVAI AND SURYA KANT, JJ.]

Bail:

- Complaint against accused – Alleging that documents of residential property, furnished by him as personal bond for his release on bail in previous criminal case relating to matrimonial dispute, was forged – Closure report by police – Judicial Magistrate ordered further investigation and accused was arrested – Bail denied twice – After re-investigation second report of police that no offence committed – Third bail application also denied by impugned order – Appeal to Supreme Court – Held: When the closure report was filed twice, High Court ought not to have declined bail, only because trial court was yet to accept the said report.*

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Allowing the appeal, the Court

- HELD:** The High Court ought to have kept in view that ‘*Bail is rule and jail is exception*’. There is no gain saying that bail should not be granted or rejected in a mechanical manner as it concerns the liberty of a person. In peculiar circumstances of the present case, where closure report was filed twice, the High Court ought not to have declined bail only because the trial court was yet to accept the said report. Further, the examination of witnesses would depend upon the fate of 2nd closure report. Considering the nature of allegations attributed to the appellant and the period he has already spent in custody, he deserves to be released on bail forthwith. [Para 7] [956-C-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 408 of 2020

From the Judgment and Order dated 16.09.2019 of the High Court of Madhya Pradesh, Bench at Indore in MCRC-34732 of 2019

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Pratap Venugopal, Ms. Surekha Raman, Ms. Ayushi Gaur, Akhil Abraham Roy, Vijay Valsan (For M/s K J John And Co) Ravi Prakash Mehrotra, Ankit Agarwal, Harsh Parashar, Amartya Singh, Rajesh Srivastava, Vishal Borade, Advs. for the appearing parties. A

The following Judgment of the Court was delivered :

JUDGMENT

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1. Leave granted.

2. Rejection of third bail application by the High Court of Madhya Pradesh, Indore Bench has prompted the appellant to approach this Court. He has been in custody since 5th January, 2019 in connection with Crime No. 210/2012 registered at Police Station Chhatripura, Indore for offences punishable under Sections 420, 177, 181, 193, 200 and 120-B of Indian Penal Code (for short, 'IPC'). C

3. Briefly stated, the facts are as follows:

4. Wife of the appellant lodged a case under Sections 498-A, 323 and 506 of IPC against him, registered as Crime No. 96/2008, wherein the appellant was arrested. Later, he was released on bail upon furnishing bail bonds of Rs.7,000/- along with documents of their residential property as a personal bond by his mother. Subsequently, the matrimonial dispute was amicably settled and as a result, the appellant was acquitted on 23rd April, 2010. D E

5. On 20th May, 2012 , Dileep Borade (appellant's cousin) and his son Vishal Borade lodged a complaint with Police alleging that documents of the residential property furnished as personal bond for appellant's release on bail in the matrimonial case were forged. This led to registration of Crime No. 210/2012 for which the appellant is incarcerated for more than a year. F

6. From perusal of the record, we note that a closure report was filed by the Police on 24th May, 2013 in Crime No. 210/2012 but the learned Judicial Magistrate after five years ordered further investigation on 20th June, 2018. Consequently, appellant was arrested on 5th January, 2019 and denied bail by the Additional Sessions Judge. The High Court also vide order dated 22nd January, 2019 declined to release him on bail. Appellant filed a second bail application before the High Court, which was dismissed as withdrawn on 10th April, 2019 with liberty to apply again after examination of certain material witnesses. Meanwhile, the police re-investigated the case and submitted a second report on 2nd G H

- A September, 2019 stating that no offence has been committed by the appellant and he deserves to be discharged. After filing of this closure report, appellant approached the High Court for a third time. But he was denied bail yet again vide the impugned order on grounds that the second closure report has not been accepted by the Trial Court and that appellant has failed to point out whether material witnesses have been examined or not. The appellant has thus been left with no other option but to approach this Court. While issuing notice, this Court on 14th November, 2019 directed that the appellant be released on interim bail.
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- C 7. Having heard learned counsel for the parties as well as the counsel representing the complainant, we are satisfied that the appellant deserves to be enlarged on bail. The High Court ought to have kept in view that '*Bail is rule and jail is exception*'. There is no gainsaying that bail should not be granted or rejected in a mechanical manner as it concerns the liberty of a person. In peculiar circumstances of this
- D case where closure report was filed twice, the High Court ought not to have declined bail only because the trial court was yet to accept the said report. Further, the examination of witnesses would depend upon the fate of 2nd closure report. Considering the nature of allegations attributed to the appellant and the period he has already spent in custody, we are satisfied that he deserves to be released on bail forthwith.
- E 8. The appeal is thus allowed and the impugned order of the High Court dated 16th September, 2019 is set aside. The interim bail order dated 14th November, 2019 is made absolute. The appellant shall stand released on regular bail subject to the bail bonds already furnished by him to the satisfaction of the trial court.

Kalpana K. Tripathy

Appeal allowed.