Madhya Pradesh High Court
Raghunandansingh Udaysingh vs State Of Madhya Pradesh on 26 July, 1994
Equivalent citations: 1995 (0) MPLJ 321
Author: J Chitre
Bench: J Chitre
ORDER J.G. Chitre, J.

1. Shri T. N. Singh learned counsel for the applicant submitted that in the present matter, the said liquor has not been examined by the competent authority. He further argued that there is no evidence on record to show that the said liquor was purchased from the applicant, who happens to be a young man coming from a good family. He pointed out that the incident is dated 17-6-1994, and therefore investigation must have been completed.

2. Shri Desai, Dy. Government Advocate for the State has submitted that the said liquor has been examined by Dr. G. C. Bhat, belonging to the Mobile Unit of Forensic Science Laboratory, Sagar. He submitted that two persons died by consumption of the said liquor sold by the applicant. Learned Dy. Government Advocate, Shri Desai pointed out the provision of Section 49A(II) (sic) of Excise Act, 1975 (hereinafter referred to as 'Excise Act') and submitted that the bail application be dismissed.

3. In the matter of Sheikh Salim v. State of M. P., 1985 MPLJ 65 = 1985 JLJ 28, this High Court has taken the view that the words embodied in Section 49-B(ii) 'shall be allowed, if opposed by prosecution' has to be construed in proper way.

4. It has been mentioned in Section 49-B(ii) that power to release on bail is definitely conferred on the Courts, but if opposed by the prosecution, no application for bail of a person accused of an offence under Section 49-A of the Act, shall be allowed. However, this High Court took a view in the matter that it is open to the Court to question the opposition offered by the prosecution, whether the opposition offered by the prosecution is fair and reasonable. Even where, there is no provision for bail, the Supreme Court has upheld the right of a citizen being enlarged on bail even in case of Preventive Detention, pending in Habeas Corpus Petitions. The law of bails, which constitutes an important branch of procedural law, is not static one; and in a welfare State, it cannot indeed be so. It has to dovetail two conflicting demands, namely on one hand the requirements of the Society for being shielded from the hazards of being exposed to the misadventures of a person, alleged to have committed a crime; and on the other, the fundamental canon of Criminal Jurisprudence, viz. the presumption of innocence of an accused till he is found guilty. There are indeed conflicting equities highlighting the law of bails, but the shield in no case should be allowed to be the sword. 5. Jurisprudence of bail has shown new dimensions and can be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice. Where the opposition by the prosecution is only for the sake of opposition, without just, fair or reasonable ground, bail may be granted by the Court.

6. While dealing with the said matter, this High Court considered the judgment of Supreme Court reported in AIR 1977 SC 366, AIR 1982 SC 942, AIR 1966 SC 1441, AIR 1978 SC 429, AIR 1978 SC

597 :

"The significance and sweep of Article 21 of the Constitution make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even handed and geared to the goals of community good, and State necessity spelt out in Article 19. The considerations set out as criteria are germane to the above constitutional proposition. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bifocal interests of justice to the individual involved and society affected."

In the matter of Bhagirathsingh Judeja v. State of Gujarat, AIR 1984 SC 372, Supreme Court observed :

"It is now well settled by a catena of decisions of the Supreme Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. If there is no prima facie case there is no question of considering other circumstances. But even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence".

7. Provision of Section 439 has given a wider discretion to the court, while dealing with applications made by accused for bail. Even offenders who have been charged for murder, which is punishable with death or imprisonment for life, can be released on bail even by Sessions Court by using its discretion. The sentence, which has been provided for an offence, punishable under Section 49-A of Excise Act is punishable with sentence of imprisonment, extending from 2 years to 10 years, where there is death. The most important consideration, dealing with the bail application, is securing the presence of the applicant for the trial and to get assured that the accused applicant does not tamper with the prosecution evidence. The court has to consider the possibility of accused tampering with the course of investigation, and subverting to the judicial process.

8. The question remains as to what "discretion" used in Section 439 of the Code means, which empowers the court for releasing the person, who has been charged for an offence which is punishable even with death or imprisonment for life. For that the opinion of Benjamin Cardozo will have to be given due importance. He has said :

"The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life'. Wide enough in all conscience is the field of discretion that remains."

An appeal to a Judge's discretion is an appeal to his judicial conscience. The discretion must be exercised, not in opposition to, but in accordance with, established principles of law.

Therefore, the discretion has to be used" properly informing oneself about the liberty as fundamental right of a citizen. The restraints put on him by the legal provision and the circumstances brought forth by the prosecution for putting restraints on his fundamental right of liberty will have to be given due weight in the light of legal precedents.

9. In this context, allegation made against such accused by the prosecution has to be considered, keeping onself in a dispassionate mood and not swayed away by emotions. It is to be seen whether an offence is too harsh, damaging permanently the society at large ?

10. In this matter the said sample of liquor has not been properly examined as required by the Rules embodied for it. The prosecution is yet to prove, that by consuming that liquor only, those two persons have died. The prosecution has to come out with a case that there was utter negligence on the part of the accused and he was responsible for some poisonous elements used in the said liquor, the consumption of which resulted in the death of those persons. Of course, I am aware that this is not a stage, where trial is being conducted, but keeping in view the provision of Section 49-B(ii) vis-a-vis provision of Sections 437 and 439, Criminal Procedure Code, an appropriate view has to be taken whether this accused should be admitted to bail or to be remanded to Jail ?

11. There is no contention on behalf of the prosecution that the applicant is a hardened criminal, and if released on bail would abscond. On the contrary, the applicant is having agricultural land, and has a fixed place of abode. The applicant is a young man of 20 or 25 years.

12. Investigation seems to have been completed. There is no contention raised by the prosecution, that if released on bail, the applicant would be tampering with the evidence and would be doing activities which would subvert judicial process.

13. In this context, the sentence likely to be inflicted on the applicant, if the prosecution succeeds in establishing his guilt, is also relevant.

14. Thus, in view of the discussion made above, I hereby allow this application and release the applicant on bail, by passing the following order :

The applicant Raghunandansingh s/o Udaysingh be released on bail on his furnishing security to the extent of Rs. 15,000/- (Rs. fifteen thousand) with one surety and P. R. Bond to that extent before JMFC Narsinghgarh in respect of Crime No. 133/94.

The applicant shall not contact, threaten or induce any of the prosecution witnesses, and shall make himself available for the purpose of interrogation as and when required.