

29.05.2014

Shri Ravi Dwivedi, Advocate for the applicant.

Shri Devendra Chaubey, Public Prosecutor, for the respondent/State.

Heard.

This is the first bail application filed by the applicant under Section 439 of the Cr.P.C. for grant of bail.

The applicant is in jail since 28/3/2014 in connection with Crime No. 176/2014 registered at Police Station Gole Ka Mandir, District Gwalior (M.P.) for the offences punishable under Sections 399, 400, 402 of IPC read with Section 25/27 of Arms Act and Sections 11/13 of MPDVPK Act.

It is alleged that on 28/3/2014 in the mid night near Indramani Nagar Road Graveyard Bridge, the applicant alongwith other 4 co-accused was found alongwith 315 bore Katta with two live cartridges, iron rod etc., making preparation of Dacoity. Police arrested the applicant and properties were seized. On behalf of applicant, it is submitted that the applicant was taken in custody on 28/3/2014 by Police Station Bahodapur for interrogation and when he was not shown as arrested, on behalf of the applicant, a writ petition was filed which was registered as W.P. No. 1995/2014 for habeas corpus and on issuance of notice in that writ petition, the applicant was shown arrested in the present crime number by police station Gole Ka Mandir. It is also submitted on behalf of the applicant that as the applicant has criminal record, taking advantage of the same, police has prepared this false case.

Learned P.P. has opposed the application on the ground that as many as 9 criminal cases registered against the applicant before different police stations, are pending which include 3 cases of similar nature.

Counsel for the applicant has relied on decision of Hon. Supreme Court in the case of **Maulana Mohammed Amir Aashadi Vs. State of Uttar Pradesh and another, (2012) 2 SCC 382.**

On perusal of the record, it is found that crime No. 594/11 of police station Ambah, District Morena, Crime No. 110/11 of police station Madhoganj and crime No. 111/11 of police station Madhoganj have been registered against the applicant under Section 395 or 394 of IPC read with MPDVPK Act besides other offences.

So far as citation relied by the counsel for the applicant, Hon. Supreme Court has given the benefit of bail to the accused in that case on the ground that trial has commenced since year 2009 but only two witnesses were examined. The present case is not on the same footings as the applicant is in custody since 28/3/2014, investigation is in progress and challan is yet to be filed.

Keeping in view the criminal antecedents of the applicant and the fact that investigation is in progress, I found this case not fit to grant bail to the applicant at this stage. Application is therefore, dismissed.

**(Sushil Kumar Palo)  
V. Judge**