

**THE HIGH COURT OF MADHYA PRADESH**  
**MCRC No.13954/2021**  
**Chhotu vs. State of M.P.**

**Heard through Video Conferencing**

**Gwalior, Dated : 30.04.2021**

Shri Madhukar Kulshrethsha, Counsel for the applicant.

Shri Alok Sharma, Panel Lawyer for the respondent/State.

Case diary is available.

This first application under Section 439 of Cr.P.C. has been filed for grant of bail.

The applicant has been arrested on 22.2.2021 in connection with Crime No.120/2020 registered at Police Station Jaura, District Morena for offence under Sections 34(2) and 49-A of Excise Act.

It is submitted by the counsel for the applicant that the applicant was arrested on 4.3.2020 and 1000 litres of O.P. Liquor was seized from his possession. In the wake of Covid-19 he was granted temporary parole on 23.3.2020 which was extended upto 29.6.2020. However, the applicant did not surrender after the period of temporary parole was over and now he has been in custody from 22.2.2021. It is submitted that the applicant has learnt a lesson and now he would not commit any mistake and in order to show his bonafides, the applicant is ready and willing to abide by any stringent condition which may be imposed by this Court including that of cash surety. The Trial is likely to take sufficiently long time and there is no possibility of his absconding or tempering with

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prosecution witnesses.

*Per contra*, the application is vehemently opposed by the Counsel for the State. It is submitted by the counsel for the State that the applicant was not only found in possession of 1000 litres of O.P. Liquor but he has also misused his liberty. It is fairly conceded that there is nothing in the case diary to indicate the criminal antecedents of the applicant.

Considered the submissions made by the Counsel for the parties through video conferencing.

The Supreme Court by order dated 23-3-2020 passed in the case of **IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS** in **SUO MOTU W.P. (C) No. 1/2020** has directed all the States to constitute a High Powered Committee to consider the release of prisoners in order to decongest the prisons. The Supreme Court has observed as under :

“The issue of overcrowding of prisons is a matter of serious concern particularly in the present context of the pandemic of Corona Virus (COVID – 19).

Having regard to the provisions of Article 21 of the Constitution of India, it has become imperative to ensure that the spread of the Corona Virus within the prisons is controlled.

We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is

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known as, (ii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.

It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.”

Considering the allegations, as well as considering the fact that in view of second wave of Covid19 pandemic, it is also necessary to decongest the jail, and without commenting on the merits of the case, it is directed that the applicant be released on bail, on furnishing cash surety of **Rs.2,00,000/- (Rs. Two Lacs Only)** to the satisfaction of the Trial Court or C.J.M. or Remand Magistrate (Whosoever is available). The applicant shall also furnish an undertaking that he shall follow all the instructions which may be issued by the Central Govt./State Govt. or Local Administration (General or Specific) from time to time for combating Covid19.

The Supreme Court in the case of **IN RE : CONTAGION OF**

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**COVID 19 VIRUS IN PRISONS** by order dated **7-4-2020** has directed as under :

In these circumstances, we consider it appropriate to direct that Union of India shall ensure that all the prisoners having been released by the States/Union Territories are not left stranded and they are provided transportation to reach their homes or given the option to stay in temporary shelter homes for the period of lockdown.

For this purpose, the Union of India may issue appropriate directions under the Disaster Management Act, 2005 or any other law for the time being in force. We further direct that the States/Union Territories shall ensure through Directors General of Police to provide safe transit to the prisoners who have been released so that they may reach their homes. They shall also be given an option for staying in temporary shelter homes during the period of lockdown.

**Accordingly, it is directed that before releasing the applicant, the jail authorities shall get the applicant examined by a competent Doctor and if the Doctor is of the opinion that his Corona Virus test is necessary, then the same shall be conducted. If the applicant is not found suspected of Covid19 infection or if his test report is negative, then the concerned local administration shall make necessary arrangements for sending the applicant to his house as per the directions issued by the Supreme Court in the case of IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS (Supra) , and if he is found positive then**

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the applicant shall be immediately sent to concerning hospital for his treatment as per medical norms. The applicant is further directed to strictly follow all the instructions which may be issued by the Central Govt./State Govt. or Local Administration for combating Covid19. If it is found that the applicant has violated any of the instructions (whether general or specific) issued by the Central Govt./State Govt. or Local Administration, then this order shall automatically lose its effect, and the Local Administration/Police Authorities shall immediately take him in custody and would send him to the same jail from where he was released. The applicant is further directed to supply a copy of this bail order to the police station having jurisdiction over his place of residence.

The other conditions of Section 437, 439 Cr.P.C. shall remain the same.

This order shall remain in force, till the conclusion of Trial. In case of bail jump, or violation of any of the condition(s) mentioned above, this order shall automatically lose its effect.

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

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reference to the Court.

With aforesaid observations, this application is **Allowed**.

**(G.S. Ahluwalia)**  
**Judge**

(alok)

**ALOK KUMAR**

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