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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE ANIL VERMA
ON THE 31st OF OCTOBER, 2023
MISC. CRIMINAL CASE No. 44234 of 2023**

BETWEEN:-

**CHANDRASHEKHAR @ SHEKHAR S/O TRILOK
KUMAWAT, AGED ABOUT 46 YEARS, OCCUPATION:
GADI MALIK GRAM ANJAD, DISTRICT BADWANI
(MADHYA PRADESH)**

.....APPLICANT

(BY SHRI HARISH PAWAR- ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH POLICE STATION KHUDEL,
INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI KAPIL MAHANT PL)

*This application coming on for admission this day, the court passed the
following:*

ORDER

With the consent of parties, heard finally.

This application under section 482 Cr.P.C. has been filed being aggrieved by the order dated 25.5.2022 passed by XXVI ASJ, Indore whereby the learned Judge has allowed the application of the applicant under section 439 Cr.P.C. and imposed a condition along with other conditions that applicant shall either deposit cash of Rs.5 Lacs with the trial court or in the form of fixed deposit in a nationalised bank.

2/ Brief facts of the case are that on 31.7.2021 complainant Kamal

Kishore loaded 100 bags of cotton in the truck No. MP09/HG 6129 of co-accused Chandrashekhar from Aurangabad to Budhani. Applicant Kamal Singh was driver of the said truck. It is alleged that present applicants in connivance with other co-accused shifted the cotton bags to the godown of co-accused Akshay Mittal and thereafter they loaded the truck with old cotton and set on fire the aforesaid truck. Accordingly case has been registered against them.

3/ Counsel for the applicant submits that applicant is in jail. His family members took the private loan for releasing the applicant. Applicant is sole bread earner of his family. The relief sought in present case has already been granted to co-accused Kamal Singh by this Court vide order dated 06/04/2023 passed in MCRC no. 14381/2023. In these circumstances, it is prayed that condition imposed by the trial court may be modified or deleted.

4/ Learned counsel for State opposed the prayer by submitting that impugned order passed by the trial court is just and proper and does not call any interference.

5/ I have gone through the order passed by the trial court and meticulously I find that trial court has not given any just and valid reason for imposing the aforesaid conditions whereas the applicant is only a driver. Hon'ble Apex Court in the case of **Dilip Singh Vs. State of Madhya Pradesh and another, (2021) 2 SCC 779** has held that :-

"It is well settled by a plethora of decisions of this Court that criminal proceedings are not for realisation of disputed dues. It is open to a court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. The facts to be taken into consideration, while considering an application for bail are the nature of accusation and the severity of the punishment in the case

of conviction and the nature of the materials relied upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character, behaviour and standing of the accused; and the circumstances which are peculiar or the accused and larger interest of public or the State and similar other considerations. A criminal court exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too without any trial"

6/ The Apex Court in the case of **Narendra Patel Vs. State of Madhya Pradesh** by order dated **6.12.2019** in **M.Cr.C.No.46421/2019** also modified the condition imposed by the High Court to deposit Rs.35 Lacs before grant of bail to the petitioner and directed that accused be released on bail on furnishing personal bond.

7/ Therefore, relying upon the law laid down by the Apex Court in the case of **Dilip Singh and Narendra Patel** (supra), this Court is of the opinion that impugned order directing the applicant to deposit cash of Rs.5 lacs with the trial court or to furnish F.D. of the equivalent amount is completely arbitrary. In view of aforesaid, the impugned order imposing the aforesaid condition is set aside to the extent that applicant shall furnish solvent surety of the equivalent amount of Rs.5 Lacs to the satisfaction of the trial court. It is made clear that remaining part of the impugned order shall remain intact.

8/ With the aforesaid modification, the petition is **allowed and disposed of.**

9/ Let a copy of this order be sent to the concerned Court.

CC as per rules.

(ANIL VERMA)
JUDGE

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