

IN THE COURT OF SESSIONS, YAVATMAL**Special Case No.47/2020**

(State Vs. Inayat Ali+2)

CNR NUMBER : MHYA010008182020

(Order Below Exh.5)

(Passed on 16th September, 2023)

This bail application is moved under section 439 of the Code Of Criminal Procedure by accused No.1-Inayat Ali Irfan Ali in Special Case No.47/20 in relation to Crime No.76/20 registered at P.S.Yavatmal(City) for the offence punishable under section 324 read with section 34 of Indian Penal Code and sections 3(2)(va) of SC and ST (Prevention of Atrocities) Act.

2] The contention of accused No.1 is that he was arrested on 9/3/23 and has been in custody since then. Only on suspicion without any circumstantial evidence his name has been involved in the final report. There was considerable delay in lodging of FIR which goes to show that it was out of revenge that deliberately his name has been dragged in this alleged crime. He had been granted bail on 19/3/20, but since he is the only bread earner of his family he was constrained to go out of station in search of labour work whereby he remained absent on posted dates. Because of the same he was also unable to communicate the same to his previous counsel which led to NBW being issued against him. Since his custody from 9/3/23 his family has been subject to great hardship. The trial will take considerable time for completion and till then he deserves to be considered as an innocent

person. No purpose would be served by keeping him behind bars. He has roots in community and is willing to produce solvent surety. He admits to oblige all terms and conditions subject to which bail may be granted. He undertakes to remain present on each date. Charge-sheet has been filed and investigation completed. He had cooperated during investigation. Charges against him are not of offence punishable with death or life imprisonment. Hence, application for relief laid above.

3] Say of prosecution was called. Additional Public Prosecutor vide his say (Exh.8) has opposed the application. It is contended that prima facie case is made out against accused. It is contended that once accused No.1 was released on bail it was his duty to remain present regularly however, he remained absent since 2020 whereby NBW came to be issued on 17/2/23 and he got arrested on 9/3/23. It is added that while accused was on bail he committed an offence under section 302 of IPC amongst others whereby Crime No.215/23 has been registered against him. It is submitted that since he is a habitual offender his application may be rejected.

4] I.O. vide his say Exh.9 has opposed the application on the ground that since his bail, Crime No.215/23 under section 302 of IPC has been registered against accused. It is stated that accused is a habitual offender. It is stated that father of accused i.e. accused No.2 of the instant crime is also involved in the Crime No.215/23 along with instant accused No.1. It is stated that on his release the accused might create terror in the locality and it will threaten the life of the informant involved in Crime No.215/23. It is contended that there exists apprehension of recurrence of crime. It is submitted that on

release the accused might pressurize witnesses of instant case and those of Crime No.215/23.

5] Defence counsel reiterated that absence of accused No.1 was not intentional and he lost track only because he had to go to other district to earn livelihood from the time of Pandemic. He adjured that since the trial would take time no purpose would be served keeping accused No.1 detained. Placing reliance on the ratio laid down in the case of **Prabhakar Tewari Vs. State of U.P. & Anr., Criminal Appeal No.153 of 2020, dated 24/1/2020**, he submitted that multiplicity of cases would not debar the accused from being entitled to bail. He submitted that accused No.1 was willing to abide with conditions imposed.

6] Refuting the defence argument APP exposted that even though accused No.1 was released on bail earlier he did not comply the conditions thereof whereby NBW came to be issued. He proffered that accused No.1 remained absent right from inception for which no explanation has been given within application. He added that considering that the matter is three years old of 2020 it can be expedited. On these grounds he adjured for the application to be rejected.

7] How far the principle of “Bail is a rule and Jail is an exception” would apply is a question of fact. While exercising its judicial discretion in considering question of grant or refusal of bail, besides gravity, the Court must also give regard to the background of facts and concomitant circumstances. The parameters to be taken into account for considering entitlement of bail broadly include, *albeit* are

not restricted to, circumstances under which offence is stated to have been committed, the status of the accused, his likelihood of fleeing from justice, probability of re-occurrence of crime on his part so on and so forth. Thus, matter of grant of bail cannot be considered by applying any inexorable formula.

8] The prosecution has objected to release of accused No.1 on the ground that *prima facie* case is made out against him. The defence counsel traversed that the evidence was deficient. In this context, it is relevant to note that veracity of evidence and whether the said is sufficient to bring home the charges for which accused No.1 has been arraigned is a question of trial and it cannot be deliberated upon in depth at this tier. It has to be taken into account only to the limited extent of whether the prayer for bail can be considered.

9] The accused has been arraigned for the offence punishable under section 324 r/w section 34 of IPC and section 3(2)(va) of 'The Act'. Knife as per prosecution case had been used for committing the offence. As per charge-sheet this weapon has already come to be seized during investigation. Thus, no further recovery or discovery at the instance of accused No.1 is manifest as being pending. Neither are any of the above offence punishable with death penalty even though they are serious.

10] Moreover, in addition to above referred facts and circumstances, the substratum of stage of trial also needs to be taken into account. In this matter accused No.2 was already released on bail. Even present accused No.1 had earlier been released on bail, however, due to his absence subsequently NBW was issued in execution of

which he is presently in custody since 9/3/23. Nevertheless, the charge-sheet has been filed. The investigation is complete. Thus, the chances of accused No.1 tampering with evidence are sporadic.

11] The prosecution has come forth with the case that while accused No.1 was on bail he had committed offence under section 302 r/w section 149 of IPC amongst others and section 3(2)(va) of 'The Act' vide Crime No.215/23. APP brought to my notice the xerox copy of the FIR of that matter annexed with I.O. say (Exh.9). It is argued that he is a habitual offender. The defence counsel refuted this argument by placing reliance on the case of **Prabhakar (Supra)**.

12] I have considered respective submissions on this point. The fact highlighted is of accused No.1 having another Criminal Case filed against him during pendency of this case. However, that *per se* cannot compel the Court for complacent refusal. As held in the case of **Prabhakar (Supra)** "these factors by themselves cannot be the basis for refusal of prayer for bail". Grant of bail needs to be considered having regard to circumstances and the factual features of the case in hand.

13] The prosecution and victim have apprehended possibility of re-occurrence and pressurizing on release of accused No.1. In this regard it is pertinent to note that no such complaint of any pressurizing on the part of accused No.1 was brought to the notice of this Court by the prosecution or the victim/informant subsequent to earlier release of accused No.1. Neither was any cancellation sought for in regard to his having contravened condition in that context. Accused No.1 as per charge-sheet is contended to reside within

jurisdiction of this Court. This has not been explicitly denied in say (Exh.8 and Exh.9).

14] The object of bail as reiterated by Hon'ble Apex Court in catena of judgments is to secure the presence of accused person at trial. Accused No.1 has submitted that he is willing to abide with conditions. There are elicited no exceptional factors which manifest likelihood of him interfering, polluting, thwarting the process of trial. Apprehension of absconsion, evasion, repetition can be addressed by imposing conditions. The application thus deserves to be countenanced.

15] Before saying omega it is clarified that any observation made hereinabove are not to be construed to be reflection on the merits of the case and shall remain confined to disposal of this application alone. Hence, I ordain as follows.

ORDER

1. The application is allowed.
2. Accused No.1-Inayat Ali Irfan Ali, r/o. Pachphoto Chowk, Ashok Nagar, Patipura, Yavatmal, Tq. & Distt. Yavatmal be released on P.B. of Rs.25,000/- (Rs. Twenty Five Thousand Only) with surety in the like amount in connection with Crime No.76/20 registered at P.S.Yavatmal(City) for the offence punishable under section 324 read with section 34 of Indian Penal Code and sections 3(2)(va) of SC and ST (Prevention of Atrocities) Act on the following terms and conditions:
 - (i) The accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the Court.

- (ii) He shall attend each and every date of trial, failing which it shall be a ground for cancellation of bail.
- (iii) The accused not to indulge in any illegal activities or in committing the offence of like nature.
- (iv) He shall produce verified copy of his Aadhar Card, contact details and other address proof.
- (v) His surety shall produce verified copy of his Aadhar Card, contact details, copy of Bank Pass-Book and other address proof.
- (vi) He shall not leave the jurisdiction of Yavatmal District *sans* prior permission of this Court.

Place : Yavatmal.
Date : 16/09/2023.

(S.R.Sharma)
Additional Sessions Judge,
Yavatmal.