

THE HIGH COURT OF MADHYA PRADESH

M.Cr.C. No.24825/2021

(Vicky S/o Jaipaldas Pariyani Vs. State of M.P.)

Indore, Dated: 01/07/2021

Heard through video conferencing.

Shri Yogesh Kumar Gupta, learned counsel for the applicant.

Shri Somil Ekdi, learned Panel Lawyer for the respondent / State of Madhya Pradesh.

They are heard. Perused the case diary / challan papers.

1] This is the **first** application under Section 439 of Criminal Procedure Code, 1973, as he / she is implicated in connection with Crime No.1010/2020 registered at Police Station Vijay Nagar, District Indore (MP) for offence punishable under Sections 8/22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The applicant is in custody since 08/12/2020.

2] Allegation against the applicant is that he was found in possession of 50 grams of MDMA drug along with co-accused Kapil Patni on **07/12/2020**.

3] Counsel for the applicant has submitted that so far as the co-accused Kapil Patni is concerned, his bail application has already been allowed by this Court in M.Cr.C. No.19744/2021 on 13/05/2021 taking note of the CCTV footage furnished by him to demonstrate that he was not present on the spot when the incident took place and infact he was taken by the police from his girlfriend's house to the police station and subsequently implicated in the offence.

4] Counsel for the applicant has submitted that so far as the present applicant is concerned, he has also been falsely implicated in the case as he was not arrested on 07/12/2020 and infact he was called by the police in the police station and was arrested in connection with the aforesaid offence. It is further submitted that to demonstrate that he was called by the police prior to the incident, the applicant has also applied for CCTV footage under Section 91 of the Cr.P.C. of the police station Vijay Nagar, Indore, however, it was informed by the police station Vijay Nagar on 05/06/2021 that the CCTV footage cannot be provided to the applicant as the same is kept saved only for 6-7 days, hence, it has already been deleted, however, the learned Judge again directed the SHO of the police station Vijay Nagar, Indore to submit a specific reply in this regard and pursuant thereto, on 23/06/2021, it was informed to the learned Judge of the trial Court that since the CCTV footages were saved only for 6-7 days in the police station but its copies are saved in the record room, hence, further time was sought and thereafter again the matter came up before the Court on 25/06/2021, wherein it was informed that the CCTV footage are available only for 15 days and thereafter they are automatically deleted. Hence, due to efflux of time, the footages as sought by the applicant cannot be provided.

5] Shri Gupta, counsel for the applicant has submitted that the aforesaid stand taken by the police is contrary to their own stand which was taken by them in respect of CCTV footage of the same date in another case which was registered at crime No.1052/2020 which relates to an offence under

Section 376(2)(n), 450, 366 and 34 of the IPC and in that case also when the application was filed under Section 91 of Cr.P.C. for obtaining the CCTV footage from 18/12/2020 till 23/12/2020, the reply of the police station Vijay Nagar was that their CCTV camera is not working since 07/12/2020. Thus, it is submitted that the stand taken by the State in the present case that the CCTV footage of 07.12.2020 cannot be supplied on account of its automatic deletion from the record is contrary to the stand taken by the police station Vijay Nagar, Indore in crime No.1052/2020.

6] Counsel has submitted that the conduct of the respondent clearly demonstrates that the applicant has been falsely implicated in the case as there is material suppression of facts on the part of the respondent/State in not providing the CCTV footage of the applicant which could have been pivotal in proving the innocence of the applicant. Thus, it is submitted that the non-furnishing of the CCTV footage is in clear violation of the order passed by the Supreme Court passed in SLP No.3543/2020 on 02/12/2020

Paramvir Singh Soni Vs. Baljit Singh and others reported as (2020)1SCC184.

7] Counsel has submitted that all other co-accused persons have already been granted bail by this Court in their respective bail applications and the applicant is in jail since 08/12/2020 and the final conclusion of the trial is likely to take sufficient long time. Hence, it is submitted that the bail application be allowed and he also be released on bail.

8] Counsel for the respondent / State, on the other hand has opposed the prayer and it is submitted that no case for grant of bail is made out. However, so far as the stand taken by the police station Vijay Nagar, Indore in two different places in respect of the CCTV footage of the same set of dates, counsel has submitted that it is a matter of record only.

9] Heard the rival submissions, perused the case diary, including the copies of the proceedings of the trial Court in the present case as well as in the case relating to case of crime No.1052/2020 and on perusal of the order passed by the Supreme Court in the case of **Paramvir Singh Soni Vs. Baljit Singh and others reported as (2020)1SCC184.**

10] So far as the decision of the Supreme Court in the case of Paramvir Singh (supra) is concerned, the relevant para of the same reads as under:-

para 17 to 22.

“17. CCTV systems that have to be installed must be equipped with night vision and must necessarily consist of audio as well as video footage. In areas in which there is either no electricity and/or internet, it shall be the duty of the States/Union Territories to provide the same as expeditiously as possible using any mode of providing electricity, including solar/wind power. The internet systems that are provided must also be systems which provide clear image resolutions and audio. Most important of all is the storage of CCTV camera footage which can be done in digital video recorders and/or network video recorders. CCTV cameras must then be installed with such recording systems so that the data that is stored thereon shall be preserved for a period of 18 months. If the recording equipment, available in the market today, does not have the capacity to keep the recording for 18 months but for a lesser period of time, it shall be mandatory for all States, Union Territories and the Central Government to purchase one which allows storage for the maximum period possible, and, in any case, not below 1 year. It is also made clear that this will be reviewed by all the States so as to purchase equipment which is able to store the data for 18 months as soon as it is commercially available in the market. The affidavit of compliance to be filed by all States and Union Territories and Central Government shall clearly indicate that the best equipment available as of date has been purchased.

18. Whenever there is information of force being used at police stations resulting in serious injury and/or custodial deaths, it is necessary that persons be free to complain for a redressal of the same. Such complaints may not only be made to the State Human Rights Commission, which is then to utilise its powers, more particularly under Sections 17 and 18 of the Protection of Human Rights Act, 1993, for redressal of such complaints, but also to Human Rights Courts, which must then be set up in each district of every State/Union Territory under Section 30 of the aforesaid Act. The Commission/Court can then immediately summon CCTV camera footage in relation to the incident for its safe keeping, which may then be made available to an investigating agency in order to further process the complaint made to it.

19. The Union of India is also to file an affidavit in which it will update this Court on the constitution and workings of the Central Oversight Body, giving full particulars thereof. In addition, the Union of India is also directed to install CCTV cameras and recording equipment in the offices of:

- (i) Central Bureau of Investigation (CBI)
- (ii) National Investigation Agency (NIA)
- (iii) Enforcement Directorate (ED)
- (iv) Narcotics Control Bureau (NCB)
- (v) Department of Revenue Intelligence (DRI)
- (vi) Serious Fraud Investigation Office (SFIO)
- (vii) Any other agency which carries out interrogations and has the power of arrest.

As most of these agencies carry out interrogation in their office(s), CCTVs shall be compulsorily installed in all offices where such interrogation and holding of accused takes place in the same manner as it would in a police station.

20. The COB shall perform the same function as the SLOC for the offices of investigative/enforcement agencies mentioned above both in Delhi and outside Delhi wherever they be located.

21. The SLOC and the COB (where applicable) shall give directions to all police stations, investigative/enforcement agencies to prominently display at the entrance and inside the police stations/offices of investigative/enforcement agencies about the coverage of the premises concerned by CCTV. This shall be done by large posters in English, Hindi and vernacular language. In addition to the above, it shall be clearly mentioned therein that a person has a right to complain about human rights violations to the National/State Human Rights Commission, Human Rights Court or the Superintendent of Police or any other authority empowered to take cognizance of an offence. It shall further mention that CCTV footage is preserved for a certain minimum time period, which shall not be less than six months, and the victim has a right to have the same secured in the event of violation of his human rights.

22. Since these directions are in furtherance of the fundamental rights of each citizen of India guaranteed under Article 21 of the Constitution, and since nothing substantial has been done in this regard for a period of over 2½ years since our first order dated 3-4-2018, the Executive/Administrative/police authorities are to implement this order both in letter and in spirit as soon as possible. Affidavits will be filed by the Principal Secretary/Cabinet Secretary/Home Secretary of each State/Union Territory giving this Court a firm action plan with exact timelines for compliance with today's order. This is to be done within a period of six weeks from today.”

(emphasis supplied)

11] Testing on the anvil of the aforesaid dictum of the Supreme Court, this Court finds force with the contentions raised by the counsel for the applicant and thus, the false implication of the applicant cannot be ruled out at this stage despite the fact that from his possession, the contraband is alleged to have been recovered. It is rather interesting to note that due to technical advancement, the police, nowadays relies heavily upon the digital information viz., tower locations, call details, cctv footages, whatsapp chats, emails etc. to connect the accused persons with the offence, but when it comes to their own working, it shies of from divulging the details, and that is done only when you have something to hide. Under such facts and circumstances of the case, when the police has two diametrically opposite stands in respect of the CCTV camera installed in the police station and same is also contrary to the decision rendered by the Supreme Court in the case of Paramvir Singh (supra), in the considered opinion of this Court, the applicant's application deserves to be allowed by giving him the benefit of doubt.

12] Accordingly, without commenting on the merits of the case, the application filed by the applicant is allowed. The applicant is directed to be released on bail upon furnishing a personal bond in the sum of **Rs.1,00,000/- (rupees one lakh)** with one solvent surety of the like amount to the satisfaction of the trial Court for his/her regular appearance before the trial Court during trial with a condition that he / she shall remain present before the court concerned during trial and shall also abide by the conditions enumerated under Section 437 (3) Criminal Procedure Code, 1973.

13] It is also observed that after his / her release on bail, if the applicant again indulges himself/herself in any criminal activities, then the present bail order shall stand cancelled without further reference to this Court; and the State / prosecution will be free to arrest the accused in the present case also.

Certified copy as per rules.

(Subodh Abhyankar)
Judge

krjoshi