

HIGH COURT OF MADHYA PRADESH, JABALPUR

M.Cr.C. No.26706/2020

Jabalpur: 11/08/2020

(Through Video Conferencing)

Mr. Sankalp Kochar, learned counsel for the applicant.

Mr. A. Rajeshwar Rao learned Government Advocate for the respondent/State.

This application has been filed on behalf of the applicant under section 439 of the Cr.P.C. for offences under sections 420,467,468,471,472,474 read with section 120B of IPC and , registered vide Crime No.95/2020, at P.S. E.O.W Bhopal, District Bhopal.

2. The applicant is in judicial custody since 24/07/2020 in the above said case. The investigating agency is the Economic Offences Wing, Bhopal (hereinafter referred to as the "EOW"). The applicant is 78 years of age and is a retired Colonel of the Indian Army. He is President of the Tilak Grah Nirman Society, Bhopal.
3. Briefly, the facts of this case are that one Rabiya Bi is the complainant along with others registered the FIR against the applicant and other co-accused persons. The property in question is land ad-measuring 93.37 acres situated in Village Singarcholi, Bhopal. The owner was one Faiz Mohammad who died leaving behind seven legal heirs. They are Mohammad Ayub, Mohammad Yakub, Hanifa Sultan, Asma Sultan, Sikandar Khan, Qamar Khan and Anwar Khan. Out of the total area of 93.37 acres, 54 acres was demarcated for residential purpose while the

remaining, approximately 39 acres was kept aside for agricultural purpose.

4. With the exception of Mohammad Yakub, the remaining six legal heirs of Faiz Mohammad jointly executed a power of attorney dated 17/01/1989 and transferred all the rights with regard to the aforesaid property to the power of attorney holder Mohammad Sharif (the then President of Tilak Grah Nirman Society). Similarly, Mohammad Yakub also executed a power of attorney on 05/08/1989 transferring all his rights with respect to the aforesaid property in favour of power of attorney holder Mohammad Sharif. Thus Mohammad Sharif became the power of attorney holder for six of the legal heirs by way of power of attorney dated 17/01/1989 and also the power of attorney holder for Mohammad Yakub vide power of attorney dated 05/08/1989. On the basis of the combined power of attorney given by the six legal heirs, Mohammad Sharif sold 34 acres of agricultural land through 12 registered sale deeds, executed in favour of various individuals between 04/02/1989 and 26/06/1989. On the basis of the power of attorney executed by Mohammad Yakub, Mohammad Sharif sold the remaining agricultural land of five acres and 64 decimal to Tilak Grah Nirman Samity vide 11 registered sale deeds and the same was executed between 15/11/1994 and 23/11/1994. Besides the power of attorney mentioned hereinabove all the 7 legal heirs of Faiz Mohammad executed 7 different power of attorneys in favour Mohammad Sharif between February and March 1990. Vesting the rights of remaining 54 acres of land in favour of Mohammad Sharif, the power of attorney holder.

5. On the strength of the 7 power of attorneys the remaining land of 54 acres was also sold to Tilak Grah Nirman Samiti by 14 registered sale deeds executed in the year 1997 and Tilak Grah Nirman Samiti further sold the land to 1500 persons.
6. In the FIR dated 07/02/2020, it has been alleged by the complainants that Mohammad Sharif had executed the power of attorney dated 17/01/1989 without the knowledge of the 6 legal heirs, the ancestors of the complainant and altered the remaining paragraphs of the power of attorney and thereby committed forgery. In the FIR, it was also alleged that Mohammad Sharif, in connivance with other accused persons, executed various sale deeds in favour of his family members and friends in the year 1989.
7. The applicant has been arrested in this case only because he happens to be on the post of President Tilak Grah Nirman Samiti, which had purchased lands from Mohammad Sharif who sold the same on the strength of the power of attorneys executed in his favour by the legal heirs of Faiz Mohammad, more than twenty five years ago.
8. Learned counsel for the applicant has taken this Court through the medical documents pertaining to the applicant which are as recent as 29/05/2020, which reflect that the applicant who is aged about 78 years is suffering from a heart ailment. The oldest documents go back to the year 2016, which show that the applicant is an old patient of heart disease. Learned counsel for the applicant also states that the cell in which the applicant has

been housed, one inmate was detected suffering from coronavirus. Learned counsel for the applicant has also taken this Court through various reports given by the prosecuting agency, the EOW. The first report is dated 28/03/2020 addressed to the Special Judge, EOW, Bhopal. In paragraph 16, the said report lays down the allegation specific to the applicant. The allegation is that the applicant Colonel Bhupendra Singh (Retd.), is the President of the Tilak Grah Nirman Samiti and in that capacity he sold 34 acres of agricultural land from the 39 acres and the remaining 5 acres and 64 decimal were purchased in the name of the Grih Nirman Society, it is not the case of the EOW that any property has been purchased in the name of the applicant. It further says that this land which belong to Yakub Mohammad was transferred to the Grih Nirman Society by Mohammad Sharif, the power of attorney holder for Yakub Mohammad (by power of attorney dated 05/08/1989) and for the remaining six legal heirs, through power of attorney dated 17/01/1989, through 11 registered sale deeds between 15/11/1994 to 23/11/1994. The second report is dated 30/06/2020, where yet again in paragraph 16, the same identical role is attributed to the applicant as has been stated hereinabove with regard to the first report. Likewise, also in the remaining two reports (in all four reports) given to the Special Judge at Bhopal (EOW, Bhopal) it is the same allegation. The Ld. Counsel for the State has opposed the application for grant of bail on the ground that investigation is still in progress.

9. This Court feels it essential to refer to the judgement of the Supreme Court in **Joginder Kumar's** case where the Supreme

Court has extensively discussed the power of the police to affect an arrest. The Supreme Court refers to the third National Police Commission report and extracts therefrom **“In India, *Third Report of the National Police Commission* at p. 32 also suggested: “An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances: (i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken victims. (ii) The accused is likely to abscond and evade the processes of law. (iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint. (iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again. It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines”**¹. After reproducing the above from the NPC report, the Supreme Court holds **“The above guidelines are merely the incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power**

¹ *Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260, Paragraph 20.

to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do².

10. This court is distressed at the alacrity and absolute insensitivity with which the EOW has considered it fit to arrest the applicant. It just didn't matter to the EOW that the applicant is a senior citizen aged seventy-two. It mattered little to them that the

² **Joginder Kumar v. State of U.P., (1994) 4 SCC 260, Paragraph 20.**

applicant was suffering from a heart ailment. The EOW couldn't care less that the applicant, with his co-morbidities came under the high-risk category of persons for whom the corona affliction could prove fatal. Not for a moment, did the EOW pause to think whether it was necessary to arrest the applicant in a case where the alleged offence was committed more than twenty-five years ago. In the facts of this case, the arrest of the applicant by the EOW betrays a sadistic pleasure on the part of the EOW to decimate the dignity and self-respect of the applicant by arresting him in a case where an arrest was simply not warranted.

- 11.** We in the judiciary too have not exactly covered ourselves with glory in the manner in which we have dealt with the applicant. The rejection order of the Ld. Court below is routine and completely devoid of human empathy to the plight of the applicant, unmoved either by the age of the applicant, his health condition or his peripheral involvement in the case or that his arrest has been affected in an alleged offence which has taken place more than twenty five years ago. The Ld. Court below does not even momentarily reflect on the need for the continued incarceration of the applicant but for observing that the investigation is still in progress. The rejection of the applicants bail application by the Ld. Court below is not unique to the present case but reflects a deeper malaise afflicting the District Judiciary which displays a subliminal fear in allowing bail applications under the perceived notion that explanation maybe called for by the High Court if , in the opinion of the High Court, the discretion in granting bail by the Ld. Court below is erroneously exercised. Resultantly, for the District Judiciary, Jail

is the norm and Bail the exception. An application which ought to have been allowed by the Ld. Court below, has trudged its way up to this court and nothing can indict the insensitivity of the judicial process more than this case where the applicant, a retired Colonel of the Indian Army, a senior citizen aged 78 years, ailing from a heart disease, has been in judicial custody since 24/07/2020 for an alleged non-heinous offence committed over twenty five years ago. Hardly the picture of a welfare state.

12. In view of what has been stated and discussed hereinabove, **the application is allowed** and it is directed that the applicant shall be forthwith enlarged on bail upon his furnishing a personal bond in the sum of **Rs.10,000/- (Rupees ten Thousand only)** with one solvent surety in the like amount to the satisfaction of the Trial Court. **A copy of this order be sent to the Court concerned by email to expedite the process of furnishing the bail bonds.**
13. The jail authorities shall have the applicant checked by the jail doctor to ensure that he is not suffering from the coronavirus and if he is, he shall be sent to the nearest hospital designated by the State for treatment. If not, he shall be transported to his place of residence by the jail authorities.

Certified copy as per rules.

(Atul Sreedharan)
Judge