

THE HIGH COURT OF MADHYA PRADESH

M.Cr.C.45174/2021

Shivsingh Tomar v. State of MP

Gwalior, Dated : 25.10.2021

Shri M.K, Chaudhary, Counsel for the applicant.

Shri B.P.S. Chauhan, Counsel for the State.

Case diary is available.

This is fourth application filed under Section 439 of Cr.P.C. for grant of bail. Previous application was dismissed by order dated 7.5.2021 passed in M.Cr.C. No. 22310/2021.

The applicant has been arrested on 25.3.2020 in connection with Crime No.19/2020 registered by Police Station Baraso Distt. Bhind for offence punishable under Sections 302, 34 of IPC and under Section 25/27 of Arms Act.

The previous bail application was decided by a co-ordinate bench of this Court and due to transfer of Hon'ble Judge, the present bail application has been listed before this Court.

This application under Section 439 of Cr.P.C has been filed on the ground that four eye witnesses namely Ramdas (PW-1), Munnesh Singh (PW-2), Veer Singh (PW-3) and Deepak (PW-4) have been examined and they have not supported the prosecution case. On 5.10.2021, the Co-ordinate Bench expressed its surprise to note that by order dated 27.8.2021, the trial Court has given up two eye witnesses namely Hariom and Sarnam Singh on the request of Public Prosecutor and accordingly the Public Prosecutor was directed to submit his affidavit for explaining reason for giving up the said eye witnesses.

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Accordingly, today Shri BPS Chauhan provided the affidavit of Shri Sanjay Kumar Sharma ADP, Bhind in a sealed envelop. The sealed envelop was opened by the Reader of this Court in open Court, in the presence of the Counsel for the parties, which contains the affidavit of Shri Sanjay Kumar Sharma. The affidavit was read-over in the open Court and Shri M.K.Chaudhry was also permitted to go through the affidavit. The affidavit is taken on record.

The affidavit of Shri Sanjay Kumar Sharma reads as under:-

“स्पष्टीकरण प्रस्तुत करने हेतु शपथ-पत्र

नाम : संजय कुमार शर्मा
पिता का नाम : स्व. श्री विश्वनाथ शर्मा
उम्र : 50 वर्ष
व्यवसाय : वकालत (अपर लोक अभियोजक)
निवासी : 21, साँई निकेतन, बरूआ नगर, लश्कर रोड भिण्ड (म.प्र.)

मैं शपथ पूर्वक सत्य कथन करता हूँ कि—

1. यहकि, शपथकर्ता अपर सत्र न्यायालय मेहगांव जिला भिण्ड में अपर लोक अभियोजक के पद पर कार्यरत है।
2. यहकि, थाना बरासों जिला भिण्ड के अपराध क्रमांक [19/20](#) के संबंध में शपथकर्ता को दिनांक 24.10.2021 को माननीय महोदय द्वारा भेजा गया पत्र प्राप्त हुआ। जिसके पालन में शपथकर्ता अपना स्पष्टीकरण प्रस्तुत कर रहा है।
3. यहकि, उक्त अपराध क्रमांक से संबंधित प्रकरण अपर सत्र न्यायालय मेहगांव में विचाराधीन है। प्रकरण में अभियोजन साक्षी क्रमांक 1 रामदास, अभियोजन साक्षी क्र. 2 मुन्नेश सिंह, अभियोजन साक्षी क्र. 3 वीर सिंह एवं अभियोजन क्र. 4 दीपक के कथन न्यायालय में पूर्ण हो चुके हैं। सभी साक्षगण न्यायालय में कथनों के दौरान पक्षद्रोही घोषित किये गये हैं। प्रतिपरीक्षण के दौरान भी कोई विशेष अभियोजन कहानी प्रतिपरीक्षण के दौरान भी साक्षियों ने कोई विशेष अभियोजन कहानी का समर्थन नहीं किया है।

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4. यहकि, अपर लोक अभियोजक द्वारा साक्षी सरनाम तथा अन्य को अभियोजन कहानी का समर्थन न करने के कारण तथा न्यायालय का महत्वपूर्ण समय नष्ट न हो, प्रकरण के निराकरण में विलम्ब न हो। इन्हीं कारणों को ध्यान में रखते हुए प्रार्थी द्वारा उक्त साक्षीगण को Givenup किया गया है। उक्त साक्षीगण को Givenup करने के संबंध में शपथकर्ता की कोई विद्वेषपूर्ण भावना नहीं रही है।

अस्तु स्पष्टीकरण के समर्थन में शपथ-पत्र पेश है।”

Considered the affidavit filed by Shri Sanjay Kumar Sharma.

In the present case Ashok S/o of Sarnam Singh is the deceased. On 27.8.2021 Shri Sanjay Kumar Sharma had given up Hariom and Sarnam Singh (father of the deceased who is an eye witness). It is really shocking that the APP who is conducting the trial has given up such an important eye witness who is the father of the deceased. In paragraph-4 of the affidavit, it is mentioned that since Sarnam Singh and Hariom were not supporting the prosecution case, therefore, in order to save precious time of the Court, these two witnesses were given up. However, it is not mentioned in the affidavit that Hariom and Sarnam Singh had ever contacted Shri Sanjay Kumar Sharma to inform that they would not support the prosecution case. Even from the order sheet dated 27.8.2021, it is clear that Hariom and Sarnam Singh were not present in the Court. In the affidavit also Shri Sanjay Kumar Sharma has not claimed that on 27.8.2021 Hariom and Sarnam were present and had contacted him in his office. How Shri Sanjay Kumar Sharma was knowing that these witnesses would not support the prosecution case is also a mystery. On 27.8.2021 one Deepak (PW-4) was present and he was examined.

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When Deepak was also not supporting the prosecution case, then why he was not given up by Shri Sanjay Kumar Sharma by applying the same analogy which he has adopted as mentioned in paragraph-4 of his affidavit. This conduct of Shri Sanjay Kumar Sharma indicates a lot. Thus, it is clear that Shri Sanjay Kumar Sharma has arbitrarily given up Sarnam Singh who is the father of the deceased and an eye witness as well as Hariom. However, this Court is refraining itself from mentioning anything further but one thing is clear that Shri Sanjay Kumar Sharma has lost the confidence. Accordingly, it is directed as under:-

1. The Public Prosecutor, Bhind shall immediately withdraw file of this case from Shri Sanjay Kumar Sharma and Public Prosecutor shall himself conduct trial and Shri Sanjay Kumar Sharma is directed to stay away from this case.
2. The Principal Secretary, Law and Legislative Affairs/District Magistrate, Bhind (whosoever is the competent authority) is directed to conduct an enquiry against Shri Sanjay Kumar Sharma and decide as to whether his continuation on the post of APP is desirable or not. Let decision with regard to desirability of Shri Sanjay Kumar Sharma to continue on APP to be decided **positively within a period of two months from today.**

In the meanwhile, Public Prosecutor, Bhind is directed

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to withdraw all the Sessions Trial involving offence under Sections 302, 307, 376/POCSO Act and all other important matters from Shri Sanjay Kumar Sharma till the enquiry report is received and the Public Prosecutor shall assign the cases only thereafter, if the continuation of Shri Sanjay Kumar Sharma is found to be desirable to continue on the post of APP.

3. The Public Prosecutor shall immediately file an application under Section 311 of Cr.P.C for seeking permission to examine Hariom and Sarnam Singh. Since this Court has already come to a conclusion that Shri Sanjay Kumar Sharma APP has wrongly given up these witnesses, therefore, the trial Court shall consider and decide the same after considering the importance of the witnesses.

So far as the present bail application is concerned, the allegations are that the applicant and his son Ashok had fired causing death of Ashok S/o of Sarnam Singh (an eye witness).

Considering the totality of facts and circumstances of the case, this Court is of the considered opinion that it is not a fit case for grant of bail. The application fails and is hereby **dismissed**.

Let a copy of this order be sent to the Principal Secretary, Law and Legislative Affairs, Trial Court, District Magistrate, Bhind and Public Prosecutor, Bhind along with the copy of order dated

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27.8.2021 passed by the trial Court as well as a copy of affidavit of Shri Sanjay Kumar Sharma which he has sent to this Court in compliance of order dated 5.10.2021 for necessary information and compliance.

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

ar

**ABDUR
RAHMAN**

Digitally signed by ABDUR RAHMAN
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