

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

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

ON THE 13th OF DECEMBER, 2022

MISC. CRIMINAL CASE No. 54836 of 2022

BETWEEN:-

**ARSHAD KHAN S/O SHRI RAHMAN, AGED 29 YEARS,
OCCUPATION: LABOUR, R/O BIJLAHATA, TEHSIL
TIJARA, ALWAR, (RAJSTHAN)**

.....APPLICANT

(BY MS. MONICA MISHRA - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH THROUGH POLICE
STATION KOLARAS, DISTRICT SHIVPURI (MADHYA
PRADESH)**

.....RESPONDENT

(BY SHRI RAJEEV UPADHYAY – PUBLIC PROSECUTOR)

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

ORDER

The applicant has filed this fourth bail application u/S.439 of the Cr.P.C for grant of bail. Applicant has been arrested on 21.05.2019, by Police Station- Kolaras, District- Shivpuri, in connection with Crime No.117/2018, for the offence punishable under Sections 394, 397, 398, 307, 353, 332 of the IPC and Section 11/13 of the MPDVPK Act. Earlier bail applications were dismissed as withdrawn by this Court.

2. It is the submission of the learned counsel for the applicant that applicant has been falsely implicated in the case and because of his criminal history, he has been arrayed as accused. Counsel referred the fact that he was formally arrested by police from the police custody of Buldana (Maharashtra) on 21.05.2019 and looted rifle of police personnel alongwith gas-cutter and parts of the ATM allegedly cut down by applicant (and another co-accused) were recovered by seizure memo on 23 & 24/03/2018, therefore discovery of such articles in consequences to memo prepared under Section 27 of Evidence Act of applicant does not hold good in the present facts and circumstances of the case. According to learned counsel, memo under Section 27 of Evidence Act is in fact prepared subsequent to seizure memo, therefore, cannot be read into memo of applicant.

3. It is further submitted that out of two police constables Anil Bunkar and Sunil Bansal, one of the constables namely Sunil Bansal did not identify the present applicant in Test Identification Parade held by Investigation Officer. Applicant shall abide by all terms and condition as imposed by this court, therefore, looking to the period of custody and grounds, his case may be considered for grant of bail.

4. Learned Public Prosecutor for State opposed the prayer and submitted that applicant and another co-accused tried to cut the ATM machine with gas-cutter and further tried to take away the ATM to cause loot to the money contained into it. However, during commission of offence, they were spotted by two constables and they tried to stop and arrest the accused persons. In retaliation thereof, applicant and other co-accused caused injury to both the police constables and taken away the rifle of constable Sunil Bansal. The rifle same was found later on by police in the field as it was thrown by

accused away from the place of occurrence of offence. Police Constable Anil Bunkar identified all accused including the present applicant in Test Identification Parade.

5. Even otherwise, medical report supports the case of prosecution because injuries were sustained by police constable. Statement recorded under Section 161 of the Cr. P.C. of Police Constable and all other persons namely Chandan and Naresh also supported the incident. Even otherwise, seizure memo of looted rifle and parts of ATM Machine were seized and it also has material bearing looking to the contents of the FIR and statement recorded under Section 161 of the Cr.P.C. of prosecution witnesses. Applicant bears criminal record of 15 cases and he is permanent resident of Rajasthan, therefore, possibility cannot be ruled out that if he is released on bail then he may abscond. Trial is in mid-way and therefore, looking to the allegation against the applicant, his application for grant of bail may be dismissed.

6. Heard the counsel for the parties and perused the documents appended thereto.

7. In the case in hand, it appears that applicant is inter-state operative and total 15 cases have been registered against him in the States like of Haryana, Madhya Pradesh and Maharashtra. It appears that he is a habitual offender and he is resident of Rajasthan, therefore possibility of his absconsion cannot be ruled out *prima facie*.

8. However, on perusal of case diary, it appears that applicant is facing serious allegations which is duly supported by the identification carried out regarding his identity. Police Constable Anil Bunkar has identified him in Test Identification Parade. Not only this, Police Constable Anil Bunkar is

the complainant and referred the course of events in categorical term in FIR and thereafter, in his statement under Section 161 of Cr. P.C. as well as court statement. He stood firm throughout. Not only this, when the applicant and other co-accused tried to escape from the spot where the alleged offence was committed, then they threw the rifle which was snatched from the possession of police constable Sunil Bansal and said recovery as well as its documentation assumes importance in view of contents of the FIR, statement under Section 161 of the Cr. P.C. and in TIP proceedings, whereby he was identified by Anil Bunkar. Not only this, recovery of looted weapon alongwith some parts of ATM machine which is subsequently corroborated by the memo under Section 27 of the Evidence Act of co-accused are to be seen holistically and in juxtaposition to the peculiar facts and circumstances of the case.

9. By causing injury to Police Constables and snatching away their rifle amount to challenge to the Rule of Law. They interfered with the functions of Public Servants and used force and deter them to perform their public duties.

10. Cumulatively when applicant is facing trial and many witnesses are yet to be examined and looking to the fact that applicant is a habitual offender and operates inter-state, therefore, possibility of his absconion cannot be ruled out.

11. In the considered opinion of this Court that no case for grant of bail is made out at this stage. Hence, application sans merits and is hereby **dismissed.**

(ANAND PATHAK)
JUDGE