

Chandra Kant Shah

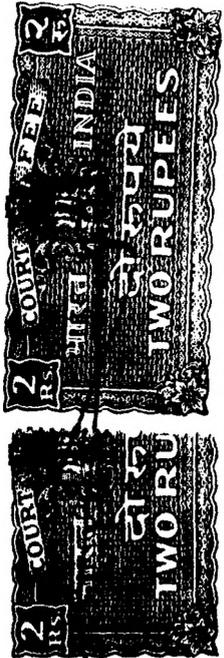
Vs.

The State of Madhya Pradesh

O R D E R

C.I.D., after probe, in Crime No.580/91, registered at P.S.Ehilai Nagar on the basis of FIR dated 28.9.91 for the offence u/s 302/34, 120-F and 109 IPC and Section 25/27 Arms Act for the commission of the murder of one Shanker Bahu Miyogi on the night between 27th and 28th September, 1991, filed charge-sheet on 9.1.92 consequent whereupon the Sessions Court, upon case being committed, framed charges against the accused Avadheesh Rai, Abhay Kumar Singh alias Abhay Singh, Mool Chand Shah, Naveen Shah, Chandra Bux Singh alias Choto, Baldeo Singh Sandhu, Chandra Kant Shah, Gyan Prakash Mishra and Palton Mallah, after registration of the case as S.T.No.233/92. Avadheesh Rai, Abhay Kumar Singh alias Abhay Singh, Moolchand Shah, Naveen Shah, Chandra Bux Singh alias Choto, Baldeo Singh Sandhu and Chandra Kant Shah all were charged u/s 120-B r/w 302 IPC. Accused Gyan Prakash Mishra, in addition to the charge u/s 120-B r/w Section 302 IPC, was also charged for the offence punishable u/s 302 r/w 34 IPC and Section 114 r/w 302 IPC. Accused Palton Mallah was charged for committing the offence u/s 302 or in the alternative u/s 302 r/w 34 IPC and also u/s 25/27 Arms Act.

2. Out of the aforesaid accused persons, this Court, in M.Cr.C.No.3969/91 and M.Cr.C. 3966/91, passed an order granting anticipatory bail u/s 438 (2) Cr.P.C. to Mool Chand Shah and Naveen Shah respectively. The co-accused





Rai was ordered for being released on bail by this Court on 15.9.92 in M.Cr.C.No.3875/91, co-accused Chandra Bux Singh alias Chhotu and Baldeo Singh were ordered for being released on bail by this Court on 15.9.92 in M.Cr.C. No. 720/92, co-accused Abhay Kumar Singh alias Abhay Singh was ordered for being released on bail by this Court on 24.6.94 in M.Cr.C.No.4660/93 and the co-accused Gyan Prakash Mishra was ordered for being released on bail by this Court on 17.8.95 in M.Cr.C. No.2022/95.

Thus, the position, as stands today, is that all the accused against the applicant, charged u/s 120-B r/w 302 IPC and also the co-accused Gyan Prakash Mishra who, in addition to the charge u/s 120-B r/w 302 IPC, was also charged u/s 302 r/w 34 IPC and Section 114 r/w 302 IPC, have been released on bail by this Court.

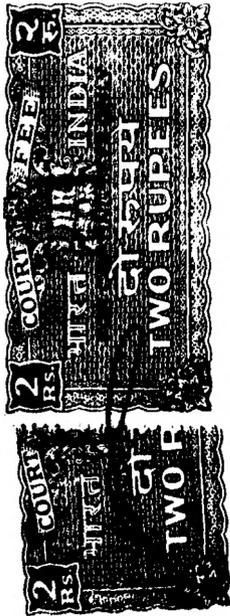
3. On behalf of Chandra Kant Shah, the present one is the seventh bail application. The details in regard to his earlier bail applications in this Court are:-

First one, registered as M.Cr.C. No.3299/91 for anticipatory bail u/s 438 Cr.P.C., was rejected on 10.1.92 though anterior to this, an order for his released on interim short term anticipatory bail was passed on 20.11.91 pending disposal of the application for anticipatory bail. The second one registered as M.Cr.C.No.771/92 for bail u/s 439 Cr.P.C. was withdrawn on 26.8.92. The third one registered as M.Cr.C.No. 3079/94 for bail u/s 439 Cr.P.C. was also withdrawn on 29.6.94. The fourth one, registered as M.Cr.C.No.3529/94 for bail u/s 439 Cr.P.C., on 29.9.94 was rejected saying "that the

revision (Cr. Rev. No.319/94) filed by the co-accused Mool Chand Shah, it has been directed that the relevant sessions trial be concluded as early as it may be possible and preferably within a reasonable period of six months. "Looking to the said direction, in my opinion, no case for releasing, the present petition is rejected." The fifth one for temporary bail registered as M.Cr.C. No. 6466/94 ~~XXXXX~~/s 439 Cr.P.C., was rejected on 9.1.95. The sixth one, registered as M.Cr.C. No.2048/95 ^{for bail} /s 439 Cr.P.C., was rejected on 27.8.95.

2. The accused is connected with the present case of ~~some name~~ as:-

Simplex Group of Industries at Bilai, Tadepara and Urla, controlled by Shah Family, has its various units managed by various members of the family, Shanker Guha Niyogi, a labour leader, who long back established 'Chhattisgarh Mines and Minerals' extended his activities to Chhattisgarh, where established 'Chhattisgarh Mukti Morcha' for social and economic development of labourers in Chhattisgarh having centre of his activities in Bilai since one and half years anterior to his murder. The Simplex Group of Industries on account of his labour activities, suffered heavy losses, and it, with a view to suppress the labourers' having loyalty to the aforesaid Union/Morcha, hatched a conspiracy with the help of Gyan Prakash Mishra, Awadhesh Rai, Akhay Singh, Baldeo Singh and Chandra Bux Singh for ^{the} ~~his~~ murder of ^{of Shankar Guha Niyogi} and in connection with which, Chandra Kant Shah, Gyan Prakash Mishra, Awadhesh Rai and Akhay Singh went to Nepal and Bihar in March, 1991 by Tem, Trethler with Ravindra Kumar alias Ravi as driver of the vehicle and brought un-authorized arms. Gyan Prakash Mishra and Akhay Singh, in July, 1991 in pursuance to conspiracy,





arranged for the stay of Palton Mallah, the assassin
Shanker Guha Niyogi, ^{was} ~~who were provided with Suzuki Motor~~
~~Bikes~~ ^{by} Chandrakant Shah for use of Gyan Prakash Mishra,
Abhay Singh, Baldeo Singh, Chandra Bux Singh and Palton
Mallah alias Ravi ^{provided a Suzuki motor bike} for keeping watch on the movements of
Shanker Guha Niyogi. In August and September, 1991 Shanker
Guha Niyogi and his trusted companion Shri Uma Shanker Rai
were attacked and stabbed by the bad elements of Simplex
Group, which included Baldeo Singh as well. From such
criminal activities, Shanker Guha Niyogi felt danger for his
life and in his diary, he noted down that Simplex Group has
given Rs.5 lacs to Gyan Prakash Mishra alias Gyano for
and criminals
bringing weapons from outside. The fact of mentioning of
name of Gyan Prakash and Chandrakant Shah indicated their
closeness and the name of other accused Abhay Singh and
Awadresh had found mentioned in the diary. On 11.9.91
Shanker Guha Niyogi with a delegation of 300 labourers,
submitted a memorandum to the President of India, inviting
his attention towards pitiable conditions of the labourers
in the Bhilai area, seeking intervention. Shri Shanker Guha
Niyogi before leaving for Delhi, recorded his voice in a
-cassette expressing danger to his life from Moolchand Shah
of Simplex Group and his family members and friends. He also
told this fact to Shri N.K. Sinha and Prashant Panjiyar,
Shail
Rajendra of W.C.L. at dinner with them on 27.9.91 in
Piccadilly Hotel. On 14.9.91, Gyan Prakash Mishra and Palton
Mallah alias Ravi met Shri B.K. Singh of Bhilai and with his
help, obtained three L.G. cartridges of 12 Bore from M/s
Eadreddin Samsuddin and Sons. The accused persons waited for
the return of Niyogi, who returned to Bhilai on 21.9.91 and,
accused Palton Mallah alias Ravi, alongwith accused Gyan
Prakash Mishra, in the night between 27th and 28th September

after reaching [redacted] 1991, at his residence [redacted] Bhilai, Distt. [redacted] caused injuries on his person with fire arm, to which he succumbed in the hospital, where post-mortem indicated 6 injuries of bullets on the upper and middle part of the left scapular region and in the opinion of the Doctor, death was as a result of said injuries and excessive flow of blood and due to haemorrhage. From the body of the deceased, three metal pellets were recovered. According to the expert opinion, injuries on the body of the deceased were caused from close range from 12 bore L.G. Cartridge. Accused Gyan Prakash Mishra gave Rs.19,000/- to Palton Mallah on 28.9.91 and asked him for leaving Bhilai whereupon he disappeared. Palton Mallah was paid the said amount by Gyan Prakash Mishra on behalf of Navin Shah and Chandrakant Shah, but out of the same he took Rs.14,500/- on loan from one Devendra Patni and Rs.4,500/- were given to him earlier in the morning by Chandra Kant Shah, and Gyan Prakash Mishra, the same day, gave a letter to Devendra Patni addressed to Navin Shah for taking Rs.20,000/- from him. He, the same day, met, Chandra Kant Shah in his office, handing over the letter which was torn by him after going through and telling him for being given the amount. The torn pieces of the letter were found on 15.12.91 during search in the office of Chandrakant Shah. Accused Chandrakant absconded on 3.10.91 from Bhilai and remained underground for two months, went to various places staying in hotels. in

5. Accused Gyan Prakash Mishra and Abhay Singh also absconded from Bhilai on 9.10.91. Gyan Prakash Mishra was arrested on 13.10.91, and Abhay Singh on 17.11.91. Palton Mallah was arrested on 21.8.93 and Chandra Kant Shah was arrested on 15.12.91 by local police in a separate crime No.904/91 u/s 25/27 Arms Act, as he was having an order for anticipatory bail from this Court in Crime No.580/91. The other co-accused were also arrested. During the investigation, revelation took place that for this murder, Palton Mallah was to be paid Rs. 1 lac after taking from Moolchand Shah, Navin Shah and Chandrakant





Shah, out of which Gyan Prakash Mishra paid him Rs.19,000/-

He made judicial confession for committing murder as well as regarding payment to Satya Prakash Mishra and Keshavnath and the applicant. In 1992-93, he came twice to Bhilai and went to the house of Gyan Prakash Mishra and took from his father Rs.20,000/- and Rs.5,000/- respectively.

6. Heard the learned counsel for the applicant, Shri Rajendra Singh assisted by Shri J.P.Sanghi and Shri Upendra Anandhi, Advocates, and heard the learned counsel Shri R.P. Anandhi, Advocate General and through him Mrs. J. Chandra Kant Shah as well, who resisted the prayer of Chandra Kant Shah for being released on bail and urged in response to the learned counsel for the applicant :

- (a) that the allegation of delay in trial on the part of prosecution are unfounded as there has been no delay on the part of the prosecution so to entitle the accused-applicant for grant of bail on this count and also refuted the submission in regard to the non-examination of material witnesses as having no substance as, so far the prosecution is concerned, all witnesses in the conspiracy case are the material witnesses and the conduct of the accused-applicant disentitles him for grant of dissection by this Court.
- (b) That the submission of the learned counsel for the applicant that there is no sufficient evidence against the applicant and he is entitled for parity quo the other-co-accused is unfounded as the case of the applicant finds support with sufficient material to establish a prima facie case of guilt for the offence for which he has been charged for, as has been considered in his earlier bail applications, and is not a case where he could claim himself entitled for parity quo the other accused persons who have already been enlarged on bail by this Court, as after rejection of his sixth bail application on 27.4.1995, no fresh material has been brought before

this Court so to entitle him for consideration of his prayer for bail.

7. So far as the first point is concerned, the learned counsel for the parties are not at variance in regard to the fact that this Court on 19-9-94 in Cr. Rev. No.319/94 (Moolchand Shah V/s. State of MP) passed following order :

"Nevertheless, looking to the importance and the circumstances of the case, it is desirable that the trial pending against the accused-petitioner should be concluded as early as it may be possible. It is hoped and expected that not only the prosecution but the accused shall also cooperate in seeing to it that the trial against the accused petitioner culminates to its legal/goal and as early as it may be possible. For this purpose, it is being directed that the trial pending against the accused petitioner be concluded as early it may be possible preferably within a reasonable period of six months."

It appears that this Court for the conclusion of trial considered 6 months w.e.f. 19.9.94 as reasonable period. By now, period of one year and 4 months are elapsed, the trial is not concluded. The application of Chandrakant Shah (M.Cr.C.No.3529/94) was rejected on 29.9.94 wherein the submission made by the learned counsel for the respondent that the case against the present accused petitioner stands on different footing because, not only he was one of the conspirators in planning the commission of the offence but also fully executed the plan of committing murder and thus short of committing the murder of Shri Niyogi himself, he did everything in seeing to it that Shri Niyogi was murdered. He was absconding from judicial custom.





The Court observed I agree with the submission made by the learned counsel for the respondent that the case against the present accused-petitioner stands on somewhat different footing than the case against the other co-accused/conspirators, who have been released on bail. Added to it, it is alleged that the petitioner had been absconding during investigation as well as allegedly absconded from judicial custody as well. It has also to be seen that in the revision filed by the co-accused Moolchand Shah, it has been directed that the relevant Sessions Trial be concluded as early as it may be possible and preferably within a reasonable period of six months. Court while rejecting the application, passed the following rejection order :

Looking to the said direction, in my opinion, no case for releasing the accused-petitioner is made out and, therefore, the present petition is rejected."

This Court on 23.10.94 in Misc. Criminal Case No. 5202/94 (Mool Chand Shah V/s State of UP) for modification of the order dated 19.9.94 passed in Cr. Rev. No.319/94 where direction was for examination of prosecution witnesses 'from day-to-day, passed an order cancelling the order for day-to-day examination of the prosecution witnesses and directed for recording evidence in two weeks in each succeeding months and observing that it is expected and hoped that the prosecution shall list material witnesses only in the first week and formal witnesses in the next week.

Learned counsel for the respondent submitted that though there has been for some time no prosecution for the case and there has been some delay but the applicant cannot be allowed to take any advantage of it as the order for completion of the trial by

examining prosecution witnesses on day-to-day basis preferably within six months, which was found reasonable by this Court, was got modified by the accused Mool Chand Shah, obtaining direction for recording of evidence two weeks in each succeeding months.

8. So far as it relates to non-examination of material witnesses by the prosecution, learned State Counsel submitted that all the prosecution witnesses are material and since the burden to establish guilt of the accused persons rests on the prosecution, it is for the prosecution to examine the witnesses as it should do so and as such, this Court did not issue any positive direction to the prosecution but only expressed hope that the prosecution shall list material witnesses only in the first week and formal witnesses in the next week. Though it is correct but the prosecution is not supposed to belie the expectation of the Court as the same has force noless than the direction which cannot be allowed to be belied. The other co-accused Gyan Prakash Mishra who is charged in addition to the charge of conspiracy and the executant of conspiracy has been released on bail by this Court in M.Cr.C.No.2082/95 on the ground of inordinate delay in trial and the reluctance on the part of the prosecution to examine its material witnesses. It does not appear proper to treat the present applicant differently under such circumstances.



9. The ~~main~~ point relating to the conduct of the applicant, ^{as before} rejection of anticipatory bail application ^{he} kept himself absconded and did not make himself available to prosecution for interrogation. He approached the Court before ^{the} trial.



Court for anticipatory bail and on 13.12.92, he before rejection of his application for anticipatory bail, made himself available to the prosecution on obtaining orders from this Court for temporary anticipatory bail. The subsequent absconcion matter while accused-applicant was in judicial custody and was admitted in the D.K. Hospital in pursuance to the order of the trial Court wherefrom he absconded on 28.4.92 wherefor a case u/s. 224 IPC was registered against him (Cr. Case No. 1887/92). The new development is that the applicant in the said case u/s. 224 IPC was acquitted by Chief Judicial Magistrate, Raigar. The case of the applicant earlier was that he was kidnapped by the naxalites and the moment he got freed from them, he surrendered to judicial custody. In connection with the subsequent development of acquittal of the applicant by the Chief Judicial Magistrate for the offence u/s. 224 IPC in Cr. Case No. 1887/92 on 29.4.95, learned counsel for the applicant invited attention of this Court to the case of Supreme Court in Krishna Govind Patil V/s State of Maharashtra (AIR 1963 SC 1413 Para 8) where the Court about the effect of acquittal observed that the effect in law is that the accused did not take part in the offence. Learned counsel for the State then submitted that against the said order of acquittal appeal is filed in this Court which is pending. It is not ~~xx~~ disputed that there is no order in appeal, staying the operation of the order and filing of appeal by itself cannot wipe of the effect of order of acquittal.

10. The last point relates to the parity with other accused who have already been enlarged on bail by this Court. The principle like that of resjudicata is not

applicable to the bail applications but as a sound policy of law, Court declines to allow the same point to be agitated time and again as it effects the very foundation of discretion conferred u/s. 439 Cr.P.C. as it needs to be judicious. However, the accused cannot be refused being considered on the basis of principles of parity treatment as it promotes the very foundation of discretion. It is to be seen as to whether applicant is entitled not being treated for parity when his case certainly is on better footing than that of the other co-accused Gyan Prakash Mishra who has already been released on bail by this Court on 17.8.95 subsequent to the rejection of applicant's earlier bail application. Here it may be seen that all the co-accused charged for conspiracy u/s. 120 B read with Sec. 302 I.P.C. have been enlarged on bail with the solitary exception of the applicant specially when the case of the applicant is now in no way on different footing, as has been stated by the learned counsel for the applicant and it has further been submitted that u/s. 120 B I.P.C. every accused of conspiracy for the commission of an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards is punishable in the same manner as if he had abetted such offence. The co-accused Gyan Prakash Mishra, who as per prosecution allegations itself mainly instrumental for the murder of Shanker Guha Niyogi and had vital active role in the conspiracy has been released on bail by this Court vide order dt.17.8.95.





- 12 -

which is extracted as below :

*17.8.95

O R D E R

This is the fourth petition for bail in a case of criminal conspiracy and murder which claimed the life of Shanker Guha Niyogi, a prominent Trade Union Leader of Chhattisgarh.

The submission is that the petitioner has been in custody for more 3½ years and till date not one of the material witnesses have been examined, whose evidence could have connected the petitioner with the crime, notwithstanding an application to that effect by the defence made to the trial Judge. Certified copy of lower Court's record to substantiate this have been just filed. Relevant order-sheet of the trial Judge is dated 23/5/95. In reply, it is submitted that the reasons which prevailed with this Court to reject previous applications for bail are still valid and good.

In view of the inordinate delay in trial and the reluctance on the part of the prosecution to examine its material witnesses to connect the present petitioner with the offence, it appears necessary in the interest of justice to enlarge him on bail. Accordingly, the petitioner is ordered to be enlarged on bail on his furnishing personal bond in the sum of Rs.15,000=00 (Rs. Fifteen thousand only) with one surety in the like amount to the satisfaction of C.J.M., Durg for his appearance before the trial Court on each date of hearing till the disposal of the trial.

C.C. on cost."

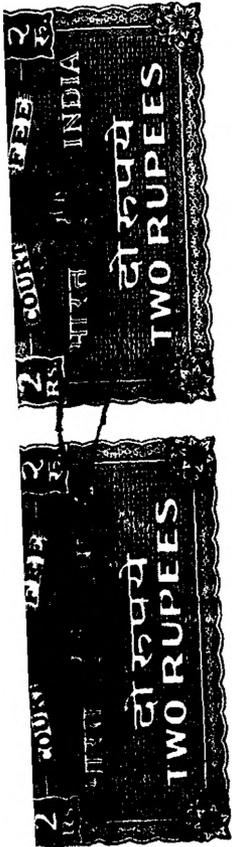
The submission of the learned counsel for the applicant is that the applicant as per case diary statements, is incriminated essentially on the evidence of eleven witnesses. The petitioner had been orally requesting the learned Prosecutor for the C.I. to examine such witnesses as incriminate the petitioner instead of examining witnesses deposing

to general type of evidence, but since no heed was paid to these requests, on 20-4-1995 the petitioner filed an application before the trial Court that the witnesses as given in the application may please be examined in the case in the next sitting of the Court and attention to the order of this Court was also invited in respect to examination of material witnesses but the prosecution took stand for bypassing the wish of this Court that all the witnesses are material.

11. The driver Ravindra Kumar alias Ravi was examined on 22-12-95 in sessions trial but has stated nothing so to incriminate the applicant rather he has given explanation for his statement u/s. 164 Cr.P.C. and before the Magistrate as he was beaten by the police and was under the fear of false implication in the crime. However, it is not the stage to express opinion about the witness but the fact remains that he has not stated anything to incriminate the applicant.

12. Learned counsel submitted that an application for cancellation of bail has been moved on the ground that the learned State Counsel argued the bail was not authorised. It is no ground for deviation as the fact remains that coaccused Gyan Prakash Mishra is on bail. The fact remains that the applicant has been in prison for little less than 3 years.

13. Learned counsel for the respondent brought to attention of the Court ^{13AC} the affidavit of R.S.Dhankhar, Dy. Subdt. of Police, C.I.I. dated 4.12.95 that on 30.10.95 Bahal Ram was to be examined as prosecution witness. He was ~~examined~~ photographed which was objected by him. He was immediately informed by Smt. Shyamwati





Mishra and Chandra Kant Shah were talking with one and another that photograph of Bahal Ram be taken and that he may be beaten even if an amount of Rs.50,000/- is spent. The affidavit of Bahal Ram and of two ladies were got filed in sessions trial. It is of no significance. It is not disclosed who was the photographer, why said two ladies came to Court and how they were interested with the prosecution when the people wanted to remain away from place and now Bahal Ram was material witness and now fear of beating could assist him from evidence. It all prima facie appears to be Peshbandi

14. Lastly learned counsel for the respondent relying on the case of Prakash Chandra Pathak v. State of U.P. (AIR 1960 S.C. 195 - Para 8) submit that the rejection of earlier bail application is precedent for the present application to be rejected. This Court does not lay down any such principle and is not attracted.

15. Considering all material and the submission of the parties as advanced, I am of the view that the applicant is entitled for bail released on bail ~~XXXXXX~~ without being given differential treatment. Accordingly the applicant charged for offence u/s. 120 B read with Section 302 I.P.C. shall be released on bail on execution of personal bond of Rs.50,000/- (Rupees Fifty Thousand) and two sureties of like amount to ensure his presence in Court on each date and not

leave the station without prior leave of the Court to the satisfaction of Chief Judicial Magistrate, Durg.

Certified copy of this order may be made available to the learned counsel for the parties on payment of usual charges.

[D.P.S. CHAUHAN]
J U D G E

18-1-1996.

TRUE COPY
Alsing
Lead Copyist,
High Court of Madhya Pradesh,
JABALPUR.

12/2/96





18-1-56

COPYIST	18/1/56	1. application received on.
	18/1/56	2. application/applicant told to appear on.
	12/2/56	3. applicant appeared on.
		4. application (with or without further or particulars) sent to record-room on.
CONTRACT		5. application received from record-room with record or without record for further or correct particulars on.
		6. applicant given notice for further or correct particulars on.
		7. applicant given notice for further funds on.
		8. notice in column 6 or 7 complied with on.
Head Copyist.	13/2/56	9. Copy ready on.
	13/2/56	10. Copy delivered or sent on.
	5/3/56	Court-fee paid on.

[Handwritten signature]