

IN THE HIGH COURT OF JUDICATURE AT : JABALPUR.

M.Cr.C.No. 6941 OF 1995.

Applicant : State of Madhya Pradesh

vs. Single Bench (Criminal)

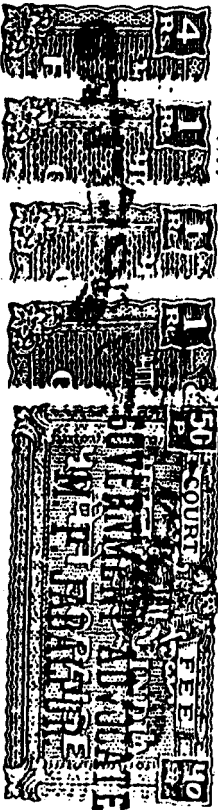
Respondents : Gyan Prakash Mishra, Son of Chhutan Mishra  
aged 28 years, resident of Steel Nagar  
Camp-1, Bhilai, District DURG.

APPLICATION UNDER SEC. 439 (2) Cr.P.C. FOR CANCELLATION OF  
BAIL GRANTED TO THE APPLICANT BY THIS HON'BLE COURT ON  
17.8.95 IN M.Cr.C.No. 2082/95.

The applicant begs to submit as under :-

1. That the respondent was arrested on 13.10.91 on the allegation that he was involved in murder of labour leader by name Guha Niyogi on or about 28.1.91.
2. That the respondent's involvement is not only in the conspiracy but in the offence itself as he accompanied the main-co-accused Paltan Mallah, who actually committed the murder to the spot as is to be gathered from the statement of Keshnath.
3. That there is evidence of Ravindra Kumar, the driver who took the party to Kathmandu, has disclosed that after procuring arms, another co-accused Chandra Kant Saha had stated that with such a fine and sophisticated gun there will be no difficulty in eliminating Niyogi and the respondent had assured him that the work would be done.
4. That there is evidence to suggest that the respondent was instrumental in arranging for murder, ~~xxx~~ hiring men for the purpose and arranging money and ammunition.
5. That this was the fourth application, three applications were rejected by the Hon'ble Court.
6. That the C.B.I., New Delhi is prosecuting Niyogi murder case and the State of M.P. has nothing to do in this case.
7. That in all previous bail applications the C.B.I. was heard and their ~~xxxx~~ counsel appeared and had opposed the bail.

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A. K. D. S.  
Advocate

8. That when the bail was granted the C.B.I. had no notice of the date nor was it heard.

9. That this fact was also known to the respondent's counsel and in all fairness he should have informed the Hon'ble Court as the Panel lawyer who was there to represent the State Govt. did not know this fact that the prosecuting agency was B.C.B.I. and not the State Govt.

10. That the Panel lawyer had no authority to appear on behalf of the C.B.I.

11. That the prosecuting agency i.e.C.B.I. was not given an opportunity to oppose before granting bail to the applicant.

12. That the bail has been granted on the ground that there is inordinate delay in trial and the reluctance on the part of the prosecution to examine its material witness to connect the present respondent with the offence.

13. That it is respectfully submitted that the delay in trial is not on account of the prosecution but because of the applicant respondent and the co-accused. The applicant respondent and the co-accused are not co-operating with the prosecution.

14. That if the C.B.I. was heard before granting bail they would have pointed out that the delay is on account of the respondent and other co-accused.

P R A Y E R .

It is, therefore, prayed that the Hon'ble Court be pleased to cancel the bail granted to the respondent on 17.8.95 in M.Cr.C.No.2085/95 as the prosecuting agency was not heard.

Jabalpur :

Dt.1.9.95.

  
COUNSEL FOR APPLICANT.