

MISC. CRIMINAL CASE NO. 2581 OF 1995.

— Chandrakant Shah. APPLICANT.
— VERSUS.
— State of M.P. NON-APPLICANT.

APPLICATION FOR TAKING INTO
CONSIDERATION THE RELEVANT FACTS
AND ALSO FOR TAKING NECESSARY
DOCUMENTS ON RECORD.

On behalf of the Central Bureau of Investigation it is respectfully submitted, as under :

1. That the bail application of Chandrakant Shah and Palton Mallah are being argued day like that of an appeal when in record of the case is not before this Hon. Court nor any prayer has been made by the applicant Chandrakant Shah or Palton Mallah to call for the same. The case was inconclusively argued on 28th September 1995 and thereafter the Dasahra holidays commenced. The Central Bureau of Investigation could not, therefore, procure all such documents which it wanted to produce to meet the submissions of the Counsel for the applicant. However, the document and the information which have been obtained are

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submitted herewith for proper appreciation of the case.

2. The Deputy Secretary (Home) ^{Ms} Snehlata Shrivastava, Government of Madhya Pradesh, Bhopal, had written a letter to the Secretary (Home), Government of India, New Delhi on 3rd October 1991 for taking up investigation of Crime No. 580 of 1991 relating to the murder of prominent labour leader Shri Shankar Guha Niyogi. It was stated in the said letter that news papers have expressed themselves differently and different leaders of national stature have also given different statements in respect thereof and the case having become matter of national importance investigation by C.B.I. was requested. A copy of the letter is being filed herewith as ANNEXURE P - 1. It was under these circumstances that the C.B.I. took the investigation in hand.

3. That the applicant Chandrakant Shah is the chief conspirator in the assassination of late labour leader Shankar Guha Niyogi. Chhatisgarh region of the State of Madhya Pradesh is very backward and largely inhabited by adivasis. They were exploited in the past and continue to be exploited by the affluent people including the Industrialists. Late Shri Shankar Guha Niyogi, therefore, thought it fit to defend the workers of Chhatisgarh region and formed a union called 'Chhatisgarh Mines Shramik

Bangh' (C.M.M.S) in 1977 and 'Chhatisgarh Mukti Morcha' (C.M.M) in 1978. The strength of the union was estimated to be somewhere near 50,000. Late Shankar Guha Niyogi got a very good response and he started making legitimate demands by making demonstrations, carrying out rallies and processions, staging Dharnas and also resorting to strikes. Simplex Group of Companies, Oswal Iron and Steel Private Ltd., and Oswal Steel Industries were all sister concerns. Oswal Iron and Steel Private Ltd. was doing the work of cutting waste iron and this waste iron was being supplied by Simplex Group of Industries. The interest of these concerns were thus complimentary. Since Simplex group of Industries were facing crisis on account of strike etc. Oswal Iron and Steel Limited also faced crisis and it was in this back ground that Chandrakant Shah hatched the conspiracy to finish Shankar Guha Niyogi:

4. That a request was made by the applicant accused on 9th March 1992 to the Judicial Magistrate Ist Class, Durg Shri J.K. Kujur that he was not keeping well and therefore, he be got medically examined. Shri Kujur directed the Superintendent, District Jail, Durg to get the applicant accused medically examined. Accordingly he was got examined on 11th March

1992 by Shri A.D. Ugaonkar, a doctor in District Hospital Durg and he opined that the applicant accused was suffering from Cervical Spondylitis and that it was necessary to give him treatment in Medical College, Raipur. On the said report the learned Magistrate passed an order dated 11th March 1992 that the applicant accused be transferred to Central Jail, Raipur for his treatment. Accordingly he was transferred to Central Jail, Raipur on 12th March 1992. The applicant accused was taken to D.K. Hospital, Raipur for which a demand for two constables was made by the Superintendent, Central Jail, from Police Lines, Raipur. D.K. Hospital, Raipur admitted the applicant accused for treatment and he was kept in room no. 22 of paying ward. Head Constable Lakshmi Narain No. 927 and four constables namely Ranji no. 321, Akshay Kumar no. 1304, Ravendra Mishra no. 297 and Bhole Prasad no. 330 were deputed to keep watch over the accused. The applicant accused remained admitted in D.K. Hospital, Raipur from 16th March 1992 to 28th April 1992. On 28th April 1992 between 5 P.M. to 6 P.M. the applicant accused absconded. At that time constable Bhole Prasad no. 330 was on duty but he was found absent from such duty as a result of which the accused absconded.

5. The Criminal Case under Section

222/223/225/A/34 Indian Penal Code vide Crime No.378 of 1992 has been registered against all the said five constables. They were also placed under suspension and all of them have been departmentally punished.

6. That the learned Additional Sessions Judge, Durg, who is trying the murder case of late Shankar Guha Niyogi in which the applicant is one of the accused, is doing other judicial work also. He is not trying the case exclusively.

7. That a prosecution witness is cross examined by about four lawyers as there are 9 accused persons. Naturally, therefore, it takes time. The list of witnesses is not exhausted on account of late production of accused from custody, decisions on miscellaneous applications and sometimes very lengthy cross examination of the prosecution witnesses. Senior Counsel Shri Rajendra Singh goes from Jabalpur practically on all the dates fixed for evidence and he has also to be accommodated. The delay prior to 8th August 1994 was on account of the accused Chandrakant Shah and Palton Mallah absconding for a long time. So much so that the C.B.I. had to announce a cash award of Rs. One Lakh to a person who could get the accused

arrested. Information in this behalf was sent to the Superintendent of Police of all C.B.I. branches in Delhi and outside vide ANNEXURE P -

2. A declaration to this effect was also got published in various news papers. An extract of such declaration having been published in the Hindustan Times of 22nd July 1993 is enclosed herewith as ANNEXURE P - 3.

8. That the prosecution is enclosing herewith number of documents showing involvement of Chandrakant Shah and other accused in the conspiracy which shall be referred to during the course of arguments.

9. That an Affidavit of Shri Balwant Singh Kanwar, Superintendent of Police has already been filed earlier giving dates as to when the successive bail applications filed by Chandrakant Shah were rejected. The fourth bail petition was dismissed on merits on 29th September 1994 by Honourable Shri Justice R.P. Awasthy, Sixth bail petition was filed by Shri Atul Awasthi, Advocate. The same could not, therefore, be heard by Honourable Shri Justice R.P. Awasthy and the same was listed before Honourable Shri Justice Rajiv Gupta which was rejected on 27th April 1995, holding -

"No case is made out for taking a

different view in this sixth application for grant of bail. "

10. The present bail petition has been filed on 22nd May 1995. The applicant has, therefore, only to show to this court as to what new circumstances have come into being after 27th April 1995. The applicant cannot be permitted to go back to 27th April 1995. After 27th April 1995 the applicant has been acquitted from the alleged offence under Section 224 of Indian Penal Code and one Gyan Prakash co-accused has been bailed out.

11. That the acquittal has already been challenged in this Honourable Court by filing an application for grant of leave to file an appeal vide Misc. Criminal Case no. 3719 of 1995, and the same is likely to be listed for hearing any day.

12. As far as the release of the co-accused Gyan Prakash is concerned the prosecution has already filed an application for cancellation of his bail. One Shri B.C. Dube a panel lawyer is reported to have appeared for the State. Shri B.C. Dube could not have appeared for C.B.I. as he was neither engaged nor instructed to argue the case. He had no documents as well with him

and therefore, he was not in a position to oppose the bail). None of the two factors can, therefore, be taken note of while deciding this bail petition.

13. Under the above circumstances the present 7th bail petition is liable to be dismissed.

14. An Affidavit in support of this application is being filed herewith.

SUPERINTENDENT OF POLICE.

C.B.I.

DL 5/10/95

COUNSEL FOR THE NON-APPLICANT.

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

MISC. CRIMINAL CASE NO. 2581 OF 1995.

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V E R S U S.

State of M.P. ... NON-APPLICANT.

A F F I D A V I T.

I, Balwant Singh Kanwar, son of Shri Durga Singh Kanwar, aged about 50 years, Superintendent of Police, C.B.I., SIC II, New Delhi, presently at Jabalpur, do hereby state on oath as under :

2. That I was associated with the investigation of the present case and am therefore, fully conversant with the facts and circumstances of the case.

3. That the facts stated in the accompanying application under paragraphs 1 to 13^H are true according to my personal knowledge being based on official records.

DEPONENT.

VERIFICATION.

I, Balwant Singh Kanwar, the above named Deponent, do hereby sign and verify this 5th day of October 1995, at Jabalpur, that the contents of paragraphs 1, 2 & 3 of the above Affidavit are true according to my personal knowledge.

DEPONENT.

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

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LIST OF ANNEXURES.

<u>S.NO.</u>	<u>DESCRIPTION OF DOCUMENTS.</u>	<u>ANNEXURE NO.</u>
1.	Copy of letter dt.3.10.91.	P - 1
2.	Copy of information sent to all C.B.I. branches.	P - 2
3.	Copy of Extract from ^{Hindustan} Times of India dt. 22.7.93.	P - 3

COUNSEL FOR THE NON-APPLICANT.

JABALPUR,

DATED.....
5/10/95