

(2008) 04 MP CK 0039
In the Madhya Pradesh High Court

Katua Patel and Another and Prabhu Patel	APPELLANT
Vs	
State of M.P.	RESPONDENT

Date of Decision : 02-04-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438, 439
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2008) ILR (MP) 32 : (2008) 3 MPHT 43 : (2008) 3 MPLJ 400

Hon'ble Judges : A.K. Saxena, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.K. Saxena, J.

These applications have been filed u/s 439 of the Code of the Criminal Procedure, 1973 (hereinafter referred to as "the Code") for bail and this order shall dispose of both the applications.

The Police Station, Nowgaon, District Chhatarpur registered the Crime No. 343/07 under Sections 302 and 201 read with Section 34 of IPC against the applicants. The anticipatory bail applications were filed by the applicants before the Sessions Court, but those applications were rejected. Thereafter, the applications u/s 438 of the Code were filed on behalf of applicants and this Court passed the orders of anticipatory bail on 23-10-2007 and 30-11-2007 in favour of applicants with these conditions that the orders of anticipatory bail shall remain in force for a period of sixty days and in the meanwhile, if the applicants so desire, may move an application for regular bail before the Competent Court, which shall be considered by that Court in accordance with law.

The application u/s 439 of the Code for regular bail was moved by the applicants Katua Patel and Bala Patel, but the same was rejected by the Sessions Court on 20-12-2007 and thereafter, they filed the bail application u/s 439 of the Code before this Court, but the same was rejected as not maintainable vide order

dated 25-1-2008 because these applicants were not in custody at the time of filing of that application. Thereafter, these two applicants surrendered before the Court of Judicial Magistrate 1st Class, Nowgaon on 28-1-2008 and then they moved a bail application u/s 439 of the Code in this Court.

The applicant Prabhu Patel also moved an application for regular bail in the Sessions Court but the same was rejected vide order dated 29-1-2008 and thereafter, he filed the application for regular bail in this Court.

The applications u/s 439 of the Code have been filed in this Court on the grounds that the anticipatory bail was granted to the applicants by the High Court and when the application for regular bail was filed in the Sessions Court, the reference of the case of Chhotelal Rai v. State of Madhya Pradesh 2007(1) MPJR 117, was made in those bail applications and the Counsel also cited this judgment at the time of arguments, but instead of applying the principles laid down by the High Court, the Sessions Court rejected the bail applications and the Court below refused to follow the ratio of the judgment passed in Chhotelal Rai's case.

After considering all the circumstances, the explanation of concerned Additional Sessions Judge was called for and according to his explanation, the case of Chhotelal Rai (supra), was not in his knowledge and this case was also not produced though referred in the bail applications and after considering the nature of offence, the bail applications were rejected. It has been further submitted by the Additional Sessions Judge in his explanation that it was not his intention to disobey the order of the High Court.

When it came in the knowledge of this Court that the citation was not produced before the learned Additional Sessions Judge, the learned Advocates, who were engaged by the applicants in the Court below, were also directed to send their reply. Both the Advocates submitted their reply and according to them, the case of Chhotelal Rai (supra), was referred in the bail applications and at the time of arguments, a photo-copy of this citation was also produced before the learned Additional Sessions Judge.

It is apparent from the replies submitted by learned Additional Sessions Judge and the learned Advocates that they have taken contradictory stand. It would not be proper to go into details as to whose contention is correct and whether the case of Chhotelal Rai (supra), was produced or not. It would not be proper to decide this dispute at this stage because it needs further enquiry and the bail applications have to be disposed of as early as possible, but one fact is not in dispute that the above citation was mentioned in the bail applications filed in the Court of Additional Sessions Judge. 1

As per explanation of Additional Sessions Judge, the case of Chhotelal Rai (supra), was not in his knowledge and the citation was not produced before him. This explanation is neither sufficient nor proper. If in any application or written arguments or during oral arguments, the citations have been mentioned or the

cases decided by the High Court or Apex Court are referred, it is duty of the Judge to go through all those citations and he must explain in his order or judgment as to why the principles laid down in those case laws, are not applicable to the case on hand. Even if, any citation is not available to the Judge or it was not produced at the time of arguments, the Judge could have asked the Advocates to produce the citation and after perusal of that citation, he could have passed the orders. Apart from that, if the Advocates do not extend their help even then, it is duty of a Judge to make every effort to find out the correct law.

There is no explanation of Additional Sessions Judge in this respect as to why he failed to find out the referred case law from the library ? Why did he not ask the Advocates to show the citation which was referred in the bail applications ? Why he failed to request the District Judge to make available the citation ? Why he passed the order without perusal of the citation ? Why he failed to write this fact in the orders that he tried his level best to find out the citation and the Advocates also refused to produce the citation or its photo copy ? All these unanswered questions clearly indicate that either the learned Additional Sessions Judge was of the view that whatever the Higher Courts decided, he is not bound by it or he was of the view that whatever he is doing, is correct and he is at liberty to give any finding irrespective of the principles laid down by the High Courts or the Supreme Court or he thinks that he is above the law and whatever he wants, he can pass the orders without paying any heed to the laws or the principles laid down by the Higher Courts. If this was not the intention of the Additional Sessions Judge, then it can be presumed that the concerned Additional Sessions Judge does not want to take pains to know the latest legal position. This type of attitude amongst Judicial Officers is growing day-by-day which is highly improper and also alarming. A Judge sits to impart justice and he has to make all efforts to do his pious duty of dispensation of justice.

In the case of Chhotelal Rai (supra), it has been held that:

It is desirable for the Regular Court to appreciate the evidence available in the case diary or the charge-sheet against the applicant who filed the bail application. Here, I must repeat that no doubt, the Regular Court has discretion to decide the bail application either way, irrespective of the order of Higher Court passed on anticipatory bail application, but where, considering the nature of offence and having regard to other facts and circumstances, if the anticipatory bail application is allowed by a Higher Court, then it is necessary for the Regular Court to pass a speaking order showing that there is something more on which the application for regular bail cannot be allowed. In such circumstances, it is not sufficient to say that the offence is of serious nature and sufficient evidence is available against the applicant, therefore, the application cannot be allowed. It is necessary for the Lower Court to lay down emphasis, while rejecting the regular bail application on that evidence also which was collected after the date of order passed on anticipatory bail application by Higher Court.

On a perusal of orders passed by the Additional Sessions Judge for rejecting the regular bail applications, I found that only on these grounds that sufficient evidence is available against the applicants and offence is quite serious, the applications were dismissed. These orders are totally against the principle laid down in Chhotelal Rai's case (supra). When the anticipatory bail was granted to these applicants thereafter, nothing incriminatory evidence was collected by the Investigating Officer to come to this conclusion that the applicants were not entitled for regular bail even then, the Additional Sessions Judge rejected the bail applications of these applicants showing total disregard to the principles laid down by the High Court in the abovementioned citation.

I considered all the facts and circumstances of the case and the evidence available in the case diary and I am of the opinion that all the applicants are entitled for regular bail.

There is nothing in the case diary to come to this conclusion that the applicants, who were granted anticipatory bail, cannot be granted regular bail u/s 439 of the Code. Therefore, both the applications are allowed and it is directed that the applicants Katua Patel, Bala Patel and Prabhu Patel shall be enlarged on bail on their furnishing a personal bond in the sum of Rs. 15,000/- (Rupees Fifteen thousand) each with a surety body in the like amount to the satisfaction of Additional Sessions Judge, Nowgaon District Chhatarpur.