

(1993) 02 MP CK 0031

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. Case No. 620 of 1993

Mukesh and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 23-02-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 446A, 482, 483
Penal Code, 1860 (IPC) — Section 324, 506

Citation : (1993) ILR (MP) 346 : (1994) 39 MPLJ 406 : (1994) MPLJ 406

Hon'ble Judges : Asha Ram Tiwari, J

Bench : Single Bench

Advocate : V.K. Dubey, for the Appellant; G. Desai, Dy. Government Advocate, for the Respondent

Judgement

A.R. Tiwari, J.

Shri V.K. Dubey, learned counsel for the applicants.

He is heard on the question of admission.

Admit. Issue notice. P. F. today.

At this stage, Shri G. Desai, learned Dy. Government Advocate appears and takes notice on behalf of the State. As such, issuance of notice became unnecessary.

The point is short. Hence, on request, the parties are heard finally.

The applicants and one Mukesh are being tried for offences punishable under Sections 324/506, Indian Penal Code in Criminal Case No. 518/92 pending on the file of Judicial Magistrate First Class, Anjad. They were admitted to bail.

It emerges from the copy of the proceedings, filed as Annexure "A" with this petition, that the applicants and Mukesh absented themselves on 19-1-1993 and as such, bail bonds were forfeited and warrants of arrests were directed to be

issued, fixing next date as 28-4-1993. It is pertinent to note that no process was directed to be issued against the surety and no direction was issued to register Misc. Judicial Case for this purpose.

It further appears that co-accused Mukesh appeared of his own on 30-1-1993 and submitted application to condone the absence, recall the warrant unexecuted and admit him to bail on fresh bail-bonds. The consideration of this prayer was however, postponed to 1-2-1993 and in the meantime the accused was committed to judicial custody despite prayer for consideration of the prayer promptly on that date itself.

The accused Mukesh, it is urged, was admitted to bail only on 1-2-1993, and had thus to suffer incarceration for two days.

The applicants filed Cri. Rev. No. 0/93 before the 1st Addl. Sessions Judge, Barwani against the orders dated 19-1-1993 and 30-1-1993 which was dismissed summarily on the following three grounds :-

- a) Revision petition impugning two orders was not tenable.
- b) The application of Mukesh was not dismissed and its consideration was only deferred till 1-2-1993.
- c) There was no order for challenge as regards other applicants.

It is not understood as to why Mukesh, though released on bail pursuant to the order dated 1-2-1993, has opted to become one of the petitioners here.

It is urged that the other four applicants are prepared to surrender before the Court. However, the apprehension lurking in their mind is that consideration of their application for release on fresh bail-bonds on their surrender might be postponed and in the meantime they-too might be consigned to custody as was done in the case of accused Mukesh. It is this factor which causes understandable anxiety particularly when one of the applicants-accused is a woman.

The cause assigned for absence was bona fide error about the date in the Court. The Court seems to have accepted this as sufficient cause as is demonstrated by the admission of accused Mukesh to bail on 1-2-1993, albeit belatedly. The proceeding of 30-1-1993 does not throw any light as to why it had been considered essential to fix the matter for 1-2-1993.

Shri Dube submitted that other applicants also failed to appear on 19-1-1993 due to same cause as is held to be good and sufficient in case of Mukesh. In this view of the matter, the apprehension that the consideration on application for release in case of other applicants on surrender is likely to be deferred or delayed and custody in the meantime is likely to be ordered seems to be rather ill-founded. Yet suitable directions are incorporated here.

It may be noted that Section 482 of the Criminal Procedure Code saved inherent

powers with no limitation or affectation to make necessary orders to give effect to any order under the code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice u/s 482 of the Criminal Procedure Code. Justice is thus the main concern. Additionally Section 483 of the Criminal Procedure Code spoke about continuous superintendence. This newly introduced section appears to be corollary to Article 227 of the Constitution of India. It embodies that -

"Every High Court shall so exercise its superintendence over the Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates."

It is thus, luculent that even appropriate circulars may be issued for achieving this object. It, thus, emerges that disposal of applications, like cases, particularly when question of liberty is involved, has also to be expeditious and proper. Postponement is thus, required to be backed by good reasons and sound judicial principles.

In the circumstances, the petition is disposed of in the terms indicated below -

- a) The applicants, barring Mukesh, shall appear before the trial Court on 25-2-1993.
- b) The trial Court shall consider the application for release on 25-2-1993 and pass appropriate orders on the same day in accordance with law.

These directions have been made in the interest of justice. The matter thus, stands concluded.

Yet a word more seems necessary. In matter of default in appearance, several factors must engage attention. To illustrate, stage of the case; benefit accruing by absence or loss resulting to the other side; previous conduct; nature of the accusation, antecedents are some of such factors which need to be kept in mind. The process in such cases is to ensure eventually the attendance as also to force maintenance of judicial discipline and decorum. However, it is not intended to operate as a "weapon of oppression". The tussel is never between law and justice. Law is the means, justice the end. Between the two, there has to be harmony rather than antinomy. The Court are expected to function firmly, yet politely. A few questions inevitably spring here. To quote, What was the necessity to sanction sojourn in jail for two days? What was the logic behind short-lived eclipse on liberty? What was the need to postpone the consideration despite written prayer for promptness? At least the proceedings or the circumstances of the case fail to answer and do not tear up this tenebrosity. The applicants approached the revisional Court, but it declined to put the procedure on correct rails and deemed fit to say monosyllabic "no". Ours is a civilised society. It is well to remember that even convicts have certain rights, what to say of those put under trial with presumptive innocence? On absence and consequent forfeiture, the right goes under hibernation yet, normally prayer on sufficient ground cannot

be denied, prompt hearing treatment has to be fair and just. Emerson very succinctly voiced once -

"Let law treat men and women well; treat them as if they were real, - perhaps they are."

and Burger, C. J. of the American Supreme Court once observed -

"a sense of confidence in the Courts is essential to maintain the fabric or ordered liberty for a free people and it is for the Subordinate judiciary by its action and the High Court by its appropriate control to ensure it."

The Courts speak through proceedings and orders. This parting note is to highlight that provision of discretion is indeed a great power vested in the Court of justice and is thus required to be exercised judiciously.

So much for the day.

Certified copy of this order be supplied on payment of usual charges today.