

(2018) 07 MP CK 0050

In the Madhya Pradesh High Court

Case No : Criminal Miscellaneous Case No.25553 Of 2018

Raju Pachvarya Meena

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 06-07-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 109, 363, 366, 376, 420B, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)
Protection of Children from Sexual Offences Act, 2012 — Section 3, 4

Citation : (2018) 07 MP CK 0050

Hon'ble Judges : G. S. AHLUWALIA, J

Bench : Single Bench

Advocate : Raj Kumar Singh Kushwah, B. K. Sharma

Judgement

This is second application under Section 439 of CrPC for grant of bail. First application was dismissed as withdrawn by order dated 16/01/2018 passed in MCRC 20748/2017.Â

The applicant has been arrested on 08/07/2016 in connection with Crime No.193/2016 registered at Police Station Kumbhraj, District Guna for offence under Sections 363, 366, 376 read with Section 34 of IPC and Section 3/4 of Protection of Children from Sexual Offences Act, 2012 [in short " the POCSO Act"].

The applicant is facing trial for offence under Section 363, 366, 376 read with Section 34 of IPC and Section 3/4 of the POCSO Act.

It is fairly conceded by the counsel for the applicant that the prosecutrix and her mother have been examined and they have supported the prosecution

case although the deposition sheets of the prosecutrix and her mother have not been placed on record. It is submitted that the applicant has filed some

of the order sheets of the trial Court, which clearly show that the trial is not progressing and the witnesses are not turning up and on some dates, the

Court was vacant. In order to substantiate his submission, the counsel for the applicant has relied upon a judgment passed by the Supreme Court in

the case of Sanjay Chandra vs. Central Bureau of Investigation, reported in (2012) 1 SCC 40.

Per contra, it is submitted by the counsel for the State that where the prosecution witnesses have supported the prosecution case, then the Court

instead of releasing the applicant on bail on the ground of delay in trial, may direct the trial Court to decide the trial, as early as possible.

Heard the submissions made by the counsel for the parties.

So far as the judgment passed by the Supreme Court in the case of Sanjay Chandra (supra) is concerned, the same has been taken note of by the

Supreme Court in the case of Virupakshappa Gouda and Another vs. State of Karnataka and Another, reported in (2017) 5 SCC 406 and it has

been held as under:-

"13. The proposition expounded above, has to be accepted, but that has to be applied appositely to the facts of each case. A bail application cannot be

allowed solely or exclusively on the ground that the fundamental principle of criminal jurisprudence is that the accused is presumed to be innocent till

he is found guilty by the competent court. The learned trial Judge has also referred to the decision in Sanjay Chandra (supra), wherein a two-Judge

Bench while dealing with bail applications, observed thus:-

21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused

person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a

punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect

to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to

time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases,

“necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that

any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of

his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before

conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether

the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a

lesson.”

14. Be it noted, though the aforesaid passages from Sanjay Chandra (supra) case have their relevance but the same cannot be made applicable in each

and every case for grant of bail. In the said case, the accused-appellant was facing trial for the offences under Sections 420-B, 468, 471 and 109 of the

IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. Thus, the factual matrix was quite different. That apart, it

depends upon the nature of the crime and the manner in which it is committed. A bail application is not to be entertained on the basis of certain

observations made in a different context. There has to be application of mind and appreciation of the factual score and understanding of the

pronouncements in the field.

15. The court has to keep in mind what has been stated in Chaman Lal v. State of UP (2004) 7 SCC 525. The requisite factors are: (i) the nature of

accusation and the severity of punishment in case of conviction and the nature of supporting evidence; (ii) reasonable apprehension of tampering with

the witness or apprehension of threat to the complainant; and (iii) prima facie satisfaction of the court in support of the charge. In Prasanta Kumar

Sarkar vs. Ashis Chatterjee and Another, (2010) 14 SCC 496, it has been opined that while exercising the power for grant of bail, the court has to

keep in mind certain circumstances and factors. We may usefully reproduce the said passage:-

“9....among other circumstances, the factors which are to be borne in mind

while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to be believed that the accused had committed the offence.
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.â??

16. In *Central Bureau of Investigation V. Vijay Sai Reddy*Â (2013) 7 SCC 452 the Court had reiterated the principle by observing thus:- â??While

granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which

conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of

the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar

considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words reasonable grounds for believing

instead of the evidence which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the

accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the

evidence establishing the guilt of the accused beyond reasonable doubt.â??

17. From the aforesaid principles, it is quite clear that an order of bail cannot be granted in an arbitrary or fanciful manner. In this context, we may,

with profit, reproduce a passage from *Neeru Yadav vs. State of Uttar Pradesh* and another (2014) 16 SCC 508 wherein the Court setting aside an

order granting bail observed:-

â??The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the 2nd

respondent. We are not oblivious of the fact that the liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional

right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like

to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of

emptiness. The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be

paralysed and immobilized. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is

wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. The society by its

collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the

collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society.

A society expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished

social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual

behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that

stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the

established parameters of law.â??

The Supreme Court in the case of Dinubhai Boghabhai Solanki vs. State of Gujarat and Others, reported in (2018) 11 SCC 129 has held as under:-

"33. We are not suggesting that Mr. Solanki and his nephew are the persons responsible for the murder of Amit Jethwa. That charge which is levelled

against them and other accused persons has to be proved in the trial by cogent evidence. We are also mindful of the principle that standard of proof

that is required in such criminal cases is that the guilt has to be proved beyond reasonable doubt. However, at the same time, it is also necessary to

ensure that trial is conducted fairly where witnesses are able to depose truthfully and fearlessly. Old adage judicial doctrine, which is the bedrock of

criminal jurisprudence, still holds good, viz., the basic assumption that an accused is innocent till the guilt is proved by cogent evidence. It is also an

acceptable principle that guilt of an accused is to be proved beyond reasonable doubt. Even in a case of a slight doubt about the guilt of the under trial, he is entitled to benefit of doubt. All these principles are premised on the doctrine that "ten criminals may go unpunished but one innocent person should not be convicted". Emphasis here is on ensuring that innocent person should not be convicted. Convicting innocence leads to serious flaws in the criminal justice system. That has remained one of the fundamental reasons for loading the processual system in criminal law with various safeguards that accused persons enjoy when they suffer trials. Conventional criminology has leaned in favour of persons facing trials, with the main objective that innocent persons should not get punished.

34. At the same time, realization is now dawning that other side of the crime, namely, victim is also an important stakeholder in the criminal justice and welfare policies. The victim has, till recently, remained forgotten actor in the crime scenario. It is for this reason that "victim justice" has become equally important, namely, to convict the person responsible for a crime. This not only ensures justice to the victim, but to the society at large as well.

Therefore, traditional criminology coupled with deviance theory, which had ignored the victim and was offender focussed, has received significant dent with focus shared by the discipline by victimology as well. An interest in the victims of the crime is more than evident now (S.357-A CrPC provides

for 'Victim Compensation Scheme' which is inserted by Amendment Act 5 of 2009 w.e.f. 31-12-2009). Researchers point out at least three reasons

for this trend. First, lack of evidence that different sentences had differing impact on offenders led policy-makers to consider the possibility that crime

might be reduced, or at least constrained, through situational measures. This in turn led to an emphasis on the immediate circumstances surrounding

the offence, of necessity incorporating the role of the victim, best illustrated in a number of studies carried out by the Home Office (Clarke and

Mayhew 1980). Second, and in complete contrast, the developing impact of feminism in sociology, and latterly criminology, has encouraged a greater

emphasis on women as victims, notably of rape and domestic violence, and has more widely stimulated an interest in the fear of crime. Finally, and

perhaps most significantly, criticism of official statistics has resulted in a spawn of victim surveys, where sample surveys of individuals or households

have enabled considerable data to be collated on the extent of crime and the characteristics of victims, irrespective of whether or not crimes become

known to the police. It is for this reason that in many recent judgments rendered by this Court, *Rudul Sah vs. State of Bihar*, (1983) 4 SCC 141, there

is an emphasis on the need to streamline the issues relating to crime victims.

35. There is a discernible paradigm shift in the criminal justice system in India which keeps in mind the interests of victims as well. Victim oriented

policies are introduced giving better role to the victims of crime in criminal trials. It has led to adopting two pronged strategy. On the one hand, law

now recognizes, with the insertion of necessary statutory provisions, expanding role of victim in the procedural justice. On the other hand, substantive

justice is also done to these victims by putting an obligation on the State (and even the culprit of crime) by providing adequate compensation to the

victims. (For details study on this aspect, see *Victim Justice- A Paradigm Shift in Criminal Justice System in India* by G. S. Bajpai and Shriya Gauba

(Thomsom Reuters, 2016) The result is that private parties are now able to assert their claim for fair trial and, thus, an effective say in

criminal prosecution, not merely as a witness but also as one impacted.

Thus, it is clear that while considering the bail application of the accused, not only the rights of the accused are to be taken note of, but the rights of

the victims are to be protected.

Under these circumstances, where the prosecutrix has supported the prosecution case, this Court is of the view that the applicant is not entitled to be

released on bail even though he is in jail from 08/07/2016 and near about two years have passed. However, the pretrial detention of the applicant

cannot be ignored and under these circumstances, the trial Court is directed to conclude the trial Court within a period of six months from the date of

receipt of certified copy of this order. If so required, the trial Court may also take coercive steps against the witnesses for securing their appearance.

With the aforesaid observation, this application is disposed of.

A copy of this order be sent to the concerning Trial Court for information and compliance.