
(1995) 02 MP CK 0007

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 357 of 1991

State of M.P.

APPELLANT

Vs

Smt. Ramabai

RESPONDENT

Date of Decision : 20-02-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378, 390, 401, 436, 437

Citation : (1995) JLJ 285

Hon'ble Judges : Jayant Govind Chitre, J

Bench : Single Bench

Advocate : Anand Agarwal, for the Appellant; Jaisingh, for the Respondent

Judgement

J.G. Chitre, J.—This application has been preferred by the applicant-Smt. Ramabai w/o Shamsunder Bedia with a prayer that warrant issued by this Court in view of Section 390 of the Code of Criminal Procedure 1973 (hereinafter referred to as Code) has been misinterpreted by the concerned Court and the arrest warrant has been issued against her. Shri Jaisingh counsel for the present applicant submitted that if Ramabai is produced before the concerned Court in view of the arrest warrant, she will have to be in custody and the concerned Court may not release her on bail under the impression that the present applicant is to be detained in custody as per order of this Court. It is his grievance that provisions of Section 390 of the Code are not properly interpreted in the subordinate Courts.

2. He submitted that if the present applicant goes in custody, it would be taken as stigma in the society and the children of the present applicant Ramabai would be finding it difficult to get married as their mother happened to be in custody. In view of this, he prayed that the present applicant be released on bail by modifying the present order. Shri Anand Agrawal, Panel Lawyer for the State submitted that Section 390 of the Code may be interpreted for guidance of the subordinate Courts.

3. Section 390 of the Code reads as follows:

Arrest of accused in appeal from acquittal:

When an appeal is presented u/s 378, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal or admit him to bail.

Section 390 of the Code empowers the High Court to issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and Court before which he is brought may commit him to prison pending the disposal of the appeal or admit him to bail.

4. Therefore, though the warrant of arrest has been issued by the High Court u/s 390 of the Code, that does not mean that subordinate Court before whom the accused is to be produced in view of that warrant does not have power to release him on bail. Section 390 of the Code gives discretion to that Court either to commit him to prison pending disposal of the appeal before the High Court or to admit him to bail. If that Court comes to a conclusion that the crime which has been indicated against such accused is so serious that he is not entitled to get the bail in view of Section 437 of the Code, that Court may send such accused to prison. But if that Court finds that the accused so arrested and brought before it, is entitled to get bail in view of provisions of Section 437 of the Code; that Court has every discretion to release that accused on bail, because the said warrant is issued u/s 390 of the Code which authorizes such action. If such warrant is not issued under provisions of Section 390 of the Code, then the situation may be different. The Court before whom such accused is produced or appears, need not to be under the impression that as such warrant is issued by the High Court directing the arrest of such accused, he should be arrested and sent to custody.

5. For clarifying, it is mentioned here that Section 437 of the Code has given a discretion to a subordinate Court by which the subordinate Court is empowered to release some accused on bail. The criteria would be whether there are reasonable grounds for the Court to believe that such person has been guilty of an offence punishable with death or imprisonment for life. If there are such reasonable grounds, then such Courts may not release such offenders on bail. If there are no such reasonable grounds, then such persons may be released on bail by using the discretion by the Court.

6. If that Court happens to be the Sessions Court, the said Court may use discretion which has been granted to Sessions Court by virtue of provisions of Section 439. Section 439 of the Code gives a wider discretion to Sessions Court. Section 439 of the Code should be interpreted legally by such Court while exercising the power of discretion to release such offenders on bail or not.

7. If the High Court issues warrant u/s 390 of the Code, following things are to noted:

(i) That while admitting the said appeal, the High Court has already exercised the discretion and issued the warrant of his arrest u/s 390 of the Code. It implidely means that High Court is of the view that in proper cases in view of Section 437 or Section 439 of the Code, the accused may be released on bail by such subordinate Courts.

(ii) When the appeal against acquittal is admitted by the High Court, there is presumption of innocence in favour of such offender though the appeal against his acquittal has been admitted by the High Court;

(iii) If such warrant is issued in the matter of revision, which has been admitted by the High Court, even in such cases also such warrant can be issued by the High Court in view of provisions of Section 401 of the Code.

8. It is made again clear that when such warrant is issued by using provisions u/s 390 of the Code, the High Court is of the opinion that in fit cases such persons can be released on bail if he furnishes such bail to the satisfaction of said subordinate Court. If such offender appears before that Court suo motu and makes an application for release on bail such application can be entertained by such Court. This has been made clear because it can happen that officer of police station situated at a distant place in interior portion of the State may arrest such offenders under the warrant issued in view of the provisions of Section 390 of the Code and the police officers may decided to bring such offenders before such Court and the said person may be required to be in detention though he could have been released on bail by such subordinate Court immediately after his arrest. The subordinate Courts are to consider that justice is to be administered and that too in the spirit which has been indicated by provisions of Section 436, 437 and 439 of the Code.

9. In the present case as it has been submitted by Shri Jaisingh, learned Counsel for the applicant, that the present applicant happens to be a woman and coming from uneducated strata of the society. It is very likely that because of her arrest, her children may find difficulties in settling their marriages. Therefore, it is directed that the Court which issued such warrant as per direction of this Court, may entertain her application for bail, if she appears suo motu before that Court.

10. As prayer has been made, it is made clear that as she happens to be a woman, keeping in view the proviso to Section 437 of the Code, she could be released on bail to the satisfaction of the Court which has issued such warrant against her. This clarification has been given because the present applicant happens to be opponent in a revision which has been admitted by this Court in which she was discharged. The present applicant should appear before this Court, after she furnishes bail in the sum of Rs. 5000/- (five thousand) in said subordinate Court. Applicant, after furnishing bail in that subordinate Court should attend this Court on 3.5.95 at 10 am.