

HIGH COURT OF MADHYA PRADESH: JABALPUR

Endt No. D/6922
III-19-8/70 Pt. II (E)

Jabalpur, dt. 03/12/2018

The copy of orders dated 16-11-18 passed by Hon'ble Shri Justice J.K. Maheshwari, Judge in MCRC NO. 28810/2018 Prabhudayal Vs. State is forwarded to :-

- ✓ 1- The Principal Secretary, Department of Law & Legislative Affairs, Bhopal for compliance & submitting the report before Registrar General so that the same may be placed before the Hon'ble Court.
- 2- The District & Sessions Judge Sagar &
- 3- Additional District Judge Deori for necessary compliance of the directions regarding conclusion of trial within one year from the date of order.
- 4- Shri Pradeep Gupta, Pannel Lawer for respondent/State for communication and compliance.


(B.P. SHARMA)
REGISTRAR (DE)

**IN THE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR**

Miscellaneous Criminal Case No. 28810 / 2018

Cause Title

Applicant:
(in Jail)

Prabhudayal, S/o. Shri. Praladh Singh Lodhi, Aged about 36 years, R/o. Village Behmani, Gaur Jhamar, Tehsil Doeri, District Sagar, Madhya Pradesh.
Occupation - Farmer
Versus

Respondent:

The State of Madhya Pradesh: through Police Station Gaur Jhamar, District Sagar, M.P.

**APPLICATION UNDER SECTION 439 OF THE CODE OF
CRIMINAL PROCEDURE, 1973**

sent on 20/7/18
Presentation Assistant

Whether any Bail Application is pending before or already disposed of by (if yes give particulars)	Particulars of Bail Application		
	No.	Date of Order	Result
Hon'ble Supreme Court of India	--	--	--
Hon'ble High Court	M.Cr.C No. 15126/2017 <i>M.Cr.C No. 1813/17</i>	27 th Sept 2017 <i>6th March</i>	Dismissed As not pressed <i>Dismissed</i>
	M.Cr.C. No. 6889/2018 <i>M.Cr.C. No. 2600/11</i>	27 th March 2018 <i>9th May 2016</i>	Dismissed As Withdrawn <i>Dismissed</i>
Session Court	S.T. 494/2015	21 st March 2016	Dismissed

Particulars of Crime

Particulars of Impugned order

Crime No. 217/2015
~~188/2015~~

S.T. No. : 494/2015

P.S. : Gaurjhamar, District Sagar, M.P.

Name of Judge : Mohd. Shakeel Khan

Offence U/S. 302, 307, 341, 294, 147 & 148, 149 of the I.P.C.

Desig. of the Court : VI - A.S.I.

Date of Arrest : 15th Oct 2015

Place : Deori, District Sagar, M.P.

Date of Order : 21st March 2016

The Applicant named above respectfully begs to submit as under:-

1. That this is Applicant's (Third) application for bail before High Court of Madhya Pradesh.
3rd File.

THE HIGH COURT OF MADHYA PRADESH

MCRC-28810-2018

(PRABHU DAYAL vs THE STATE OF MADHYA PRADESH)

Jabalpur-16.11.2018

Shri Satyam Agrawal, counsel for the applicant.


Shri Pradeep Gupta, Panel Lawyer for respondent/State.

This is the fifth bail application filed on behalf of the applicant under Section 439 of the Cr.P.C. in connection with Crime No.217/2015 registered by Police Station Gaur Jhamar, District Sagar, for the offences under Sections 302, 307, 341, 294, 147, 148 and 149 of the IPC on rejection of the earlier bail applications i.e. M.Cr.C. No.15126/2017 dated 27/09/2017, M.Cr.C. No.6889/2018 dated 27/03/2018, M.Cr.C. No.1813/2017 dated 06/03/2017 and M.Cr.C. No.7600/2016 dated 09/05/2016 as not pressed with liberty to renew the prayer after recording the statements of the eye witnesses. On 27/09/2017 liberty was given to renew the prayer after four months which would begin from the next date fixed by the trial Court.

By this time period of fourteen months have already been elapsed but the statement of the eye witnesses have not been recorded. In the status report dated 21/08/2018, trial Judge has taken the pretext that on 23/11/2017 eye witnesses namely Heera,

Qg

Kamal Singh and Vinod were present but the accused namely Prabhudayal and Siyaram were not produced from the jail and the advocates representing them stated that their statements may be recorded in the presence of the accused, therefore, their statements have could not been recorded and thereafter the prosecution witnesses have not turned up. The trial Court has also taken the pretext that the copy of the order of the High Court did not come to his knowledge because it was not written on the top of the file with red ink, that it has come under the directions of the High Court. The other pretext taken by the trial Court is that the post of Additional Sessions Court is recently created in Deori which comes within the territorial jurisdiction of District Sagar, and he has been posted there in February, 2018 and the file came to his knowledge on 22/02/2018. The Public Prosecutor has not been appointed to represent the State before the Additional Sessions Judge. Earlier Shri Umesh Pandey and Shri P.L. Rawat, Public Prosecutor, used to come from Sagar to represent the State. They appeared before the Court some time in noon just prior to 2 PM or in afternoon only three days in a week, therefore, dates were being fixed as per the convenience of the Public Prosecutor. The trial Court has further taken a pretext regarding listing of the cases on



priority basis relating to sessions trial and the trials in which the accused are in custody.

After perusal of the status report, first reason assigned regarding cross examination of the eye witnesses in the presence of the accused on 23/11/2017 on behalf of the witnesses appears to be just and proper. Nothing is available on record that why these witnesses have not been produced in subsequent dates by the prosecution. so far as mentioning regarding direction of the High Court by red ink on top of the file is concerned it is related to the management of the Court or judge concerned which cannot be a pretext, for the order of the High Court. How the better management can be made by him it is his duty while conducting the cases. So far as non availability of the Public Prosecutor is concerned, it is the duty of the said Government to provide the Public Prosecutor as and when the Court of Additional District and Sessions Judge is created and posting is made in that Court. As and when creation of the Court is approved by the High Court, a copy thereof is being sent to the Government to appoint the Public Prosecutor and the staff. Non appointment on the part of the Government is amounting to create hindrance in dispensation of justice which is not permissible under the law for any reason

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whatsoever.

In view of the aforesaid, a copy of the order be sent to the Principal Secretary Law of the State of M.P. for appointment of the Public Prosecutor within a month from today and submit a compliance report to the Registrar General of this Court, thereby the trial which is pending in the Court of Additional Sessions Judge Deori may be proceeded and decided. In case the regular appointment is not made, any Public Prosecutor working either at Sagar or at Khurai be assigned the whole day work to complete it within the given time.

So far as pendency of numbers of the cases as explained by the judge, for delayed recording the statements cannot be accepted. If the numbers of trial were in excess, there may be no reason to not to appoint regular Public Prosecutor in the Court of Additional District and Sessions Judge. The Judge has not explained that in how many cases, direction of the High Court was there and those cases have been taken by him on priority basis. In view of the foregoing, the status report is not acceptable and at present it primarily appears that there is the delay on the part of the prosecution and not on the part of the defence.

I have considered the merits of the case. Considering the

statements of the eye witnesses and the role as assigned at present I am not inclined to grant bail to the applicant but looking to the fact that the applicant is in custody for last more than three years, it is directed the trial be concluded now within one year from today otherwise the appellant would be at liberty to apply for bail on the ground of delay in trial.

Let a copy of this order be sent by the Registry to the PS Law and District Judge concerned for communication and compliance to the concerned Additional Sessions Judge.

A typed copy of this order be also supplied to the Panel Lawyer for communication and compliance.

In case the appointment of the Public Prosecutor is not made from the date of the communication of the order, the matter may be placed in chamber.


(J.K. Maheshwari)
Judge