

HIGH COURT OF MADHYA PRADESH : JABALPUR

Endt. No...B/129(Prose. Evi)/
III-2-9/40-V

Jabalpur, dt. 08/01/19

The copy the order passed by Hon'ble Shri Justice Atul Sreedharan dated 04-12-2018 in the MCr.C. No. 32718/18 Rambahor Saket Vs. State of M.P. M.Cr.C. No. 25031/18 Balwan@ Balman Singh Vs. State of M.P., M.Cr.C. No. 17896/2018 Aleem @ Annu Khan Vs. State of M.P. & others is forwarded to -

- (i) The District & Sessions Judges.....(all in the State) with a request to circulate the copy of the same to all the Judges working under your kind control for information & compliance of directions with regard to expeditious completion of Prosecution evidence .
- (ii) The District & Sessions Judge (Inspection Vigilance), Jabalpur / Indore / Gwalior;
- (iii) The Director MPSJA for information & needful ,
- (iv) Director General of Police Jahagirabad, Police Headquarter Bhopal
- (v) The Principal Registrar, Bench at Indore/Gwalior High Court of M.P., Jabalpur.
- (vi) P.S. to Hon'ble the Chief Justice ,High Court of Madhya Pradesh Jabalpur for placing the matter before His Lordships,
- (vii) P.S. to Registrar General/ Principal Registrar(Judl)/ Principal Registrar (Inspection & Vigilance),/ Principal Registrar (Examination) / Principal Registrar (ILR) High court of Madhya Pradesh Jabalpur,
- (viii) Registrar(J-I),(J-II) /(D.E.)/(A)/ (Vig.)/ (VI.)/ High Court of Madhya Pradesh, Jabalpur.
- (ix) The Registrar(IT) for uploading the same on the Website of High Court of M.P.


(B.P. SHARMA)
REGISTRAR(DE)

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IN THE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

M.Cr.C. No. 32718 OF 2018

Cause Title

APPLICANT : Rambahor Saket, S/o Shri Badri Prasad Saket,
(In Jail) Aged 40 years, Occupation: Shopkeeper,
R/o Village Jumaikala, Post: Jumaikhurd,
P.S. Gadh, District: Rewa, M.P.

Presented on 13/08/18
By Jagat Singh
Presentation/Receipt of Affidavit

Versus

RESPONDENT : The State of Madhya Pradesh through the
Police Station: Gadh, Dist. Rewa, M.P.

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

Bail Application pending before or already disposed off by	No.	Date of order	Result
Hon'ble Supreme Court	Nil	Nil	Nil
Hon'ble High Court(s)	1. M.Cr.C. No. 18626/17	03.01.2018	Withdrawn
	2. M.Cr.C. No. 7786/18	18.05.2018	Dismissed
Sub. Court(s)	Bail No. 117/2017	11-09-2017	Dismissed



Particulars of Crime	Particulars of Impugned order
Crime No: <u>285/2017</u>	Bail Application No.: <u>117/2017</u>
P.S.: <u>Gadh, Rewa, M.P.</u>	Name of Judge: <u>Shri Sunil Kumar Jain</u>
Offence u/s: <u>376 and 342 of the IPC and 3/4 of the POCSO Act</u>	Desig. of the Court: <u>Special ASJ, POCSO</u>
Date of arrest: <u>31.08.2017</u>	Place: <u>Tyonthar, Rewa (M.P.)</u>
	Date of Order: <u>11.09.2017</u>

**THE HIGH COURT OF MADHYA PRADESH,
PRINCIPAL BENCH AT JABALPUR**

**M.Cr.C.No.32718/2018
Rambahor Saket Vs. State of M.P**

**M.Cr.C.No.25031/2018
Balwan @ Balman Singh Vs. State of M.P**

**M.Cr.C No. 17896/2018
Aleem@Annu Khan Vs. State of M.P**

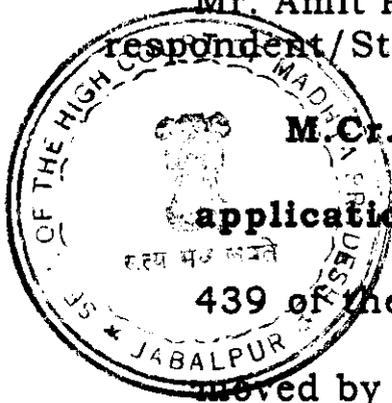
Jabalpur Dated: 04.12.2018

Mr. Jagat Singh, learned counsel for the applicant in **M.Cr.C.No.32718/2018**.

Mr.A.K.Dubey, learned counsel for the applicant in **M.Cr.C.No.25031/2018**.

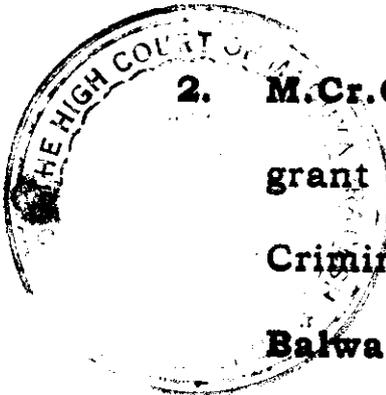
Mr. Akash Singhai, Learned counsel for the applicant in **M.Cr.C No. 17896/2018**.

Mr. Amit Pandey, learned Panel Lawyer for the respondent/ State.



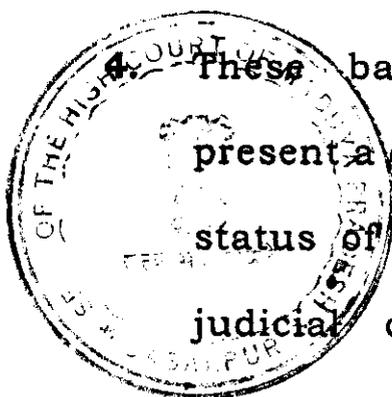
M.Cr.C.No.32718/2018 is the third application for grant of bail under Section 439 of the Code of Criminal Procedure, 1973 moved by the applicant-**Rambahor Saket** who is in judicial custody in connection with Crime No.285/2017, for offences punishable under Sections 376 and 342 of the Indian Penal Code and also under Section 3/4 of the POCSO Act, registered at P.S Gadh, Rewa (M.P). The first bail application was dismissed as withdrawn

vide order dated 03.01.2018 passed in M.Cr.C.No.18626/2017, with liberty to file afresh after the statement of the prosecutrix is recorded before the Trial Court. Thereafter, the second application was also dismissed for want of prosecution vide order dated 18.05.2018 passed in M.Cr.C.No.7786/2018. **The Applicant is in Judicial Custody since 31/08/17. Till the date of filing of the bail application before this court, not a single witness for the prosecution has been examined.**



2. M.Cr.C.No.25031/2018 has been filed for grant of bail under Section 439 of the Code of Criminal Procedure, 1973 by the applicant **Balwan @ Balman Singh** herein who is in judicial custody in connection with Crime No.356/2016 for offences punishable under Sections 363, 366, 344, 376-D/34 of IPC and section 5/6 of POCSO Act registered at P.S Madhav Nagar, District-Katni (M.P). **The Applicant is in Judicial Custody since 26/12/17. Till the date of filing of the bail application before this court, not a single witness for the prosecution has been examined.**

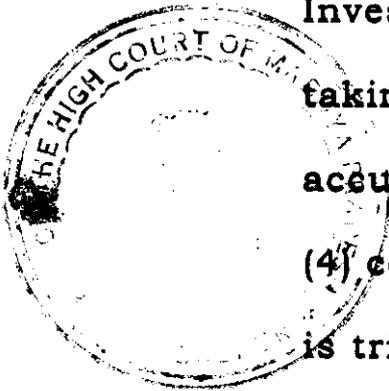
3. **M.Cr.C No. 17896/2018** is the second application for grant of bail under Section 439 of the Code of Criminal Procedure, 1973 by the applicant **Aleem @ Annu Khan** who is in judicial custody in connection with Crime No.356/2016 for offences punishable under Sections 363, 366, 344, 376-D/34 of IPC and section 5/6 of POCSO Act registered at Police Station-Madhav Nagar, District-Katni (M.P). **The Applicant is in Judicial Custody since 26/12/17. Till the date of filing of the bail application before this court, not a single witness for the prosecution has been examined.**



4. These bail applications under judgement present a disturbing picture with regard to the status of under trials who may languish in judicial custody interminably during the process of protracted trials. It goes without saying that the jurisdiction of bail which is vested equally before the Court of the Judicial Magistrate First Class under Section 437 Cr.P.C and before the Court of Sessions and High Courts under sections 438 and 439 of Cr.P.C must be exercised judiciously,

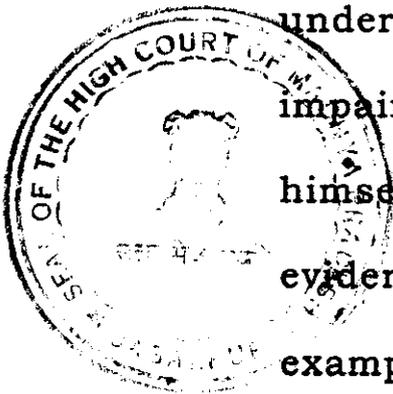
balancing both the interest of the society and the right of the accused to a speedy trial. Though both the factors are equally important, but facts of a case may tip the scale in favour of the accused giving due regard to his right to a speedy trial. Time and again the High Courts and the Supreme Court have emphasised the importance of an expeditious trial.

5. The stages of a criminal proceedings are (1) Investigation (2) filing of the charge sheet (3) taking cognizance and summoning the accused (where the accused is not in custody) (4) committal of the accused where the offence is triable by the Court of Sessions (5) framing of charges (6) EVIDENCE FOR THE PROSECUTION (7) statement of the accused u/s. 313 Cr.P.C (8) Evidence for the Defence (9) Final Arguments and (10) Judgement. Though delay can take place at almost all the aforementioned stages, experience shows that the two stages where delay is most apparent is at the stage of investigation, and the stage of evidence for the prosecution. Of the two, delay on account of a lengthy investigation can be

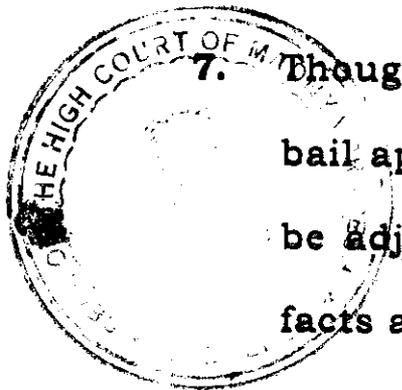


redressed by providing succour to an incarcerated accused in the form of a statutory bail u/s. 167(2) Cr.P.C or a regular bail under section 437 or 439 Cr.P.C. But delay at the stage of evidence for the prosecution can play havoc with the rights of the accused to a speedy trial and render futile the very intent and purpose of the criminal justice system.

6. Delay in securing the presence of the witnesses for the prosecution to testify at the earliest before the trial court results in (a) an unjustifiable detention of the accused as an undertrial, (b) it has the propensity to gravely impair the ability of the accused to defend himself effectively if the delay in recording the evidence of the prosecution results in, for example, in the death of a crucial defence witness, (c) it creates an opportunity for the accused to suborn or intimidate the material witnesses of the case to turn hostile when they eventually appear in court to testify and (d) it results in the loss of public faith in the justice delivery system. Delay at this stage, on the one hand effects the human rights of the accused



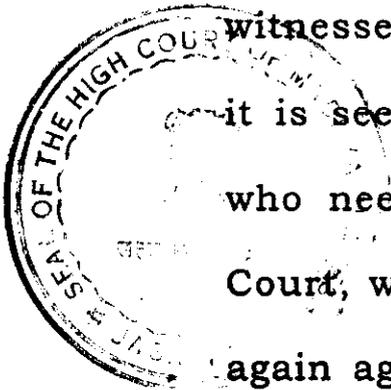
and on the other imperils the society with the prospect of acquitting and setting free a criminal who has effectively used the delay in the production of the witness for the prosecution, by either bribing or threatening the witness to turn hostile. Either ways, an expeditious examination of the prosecution witnesses is the only way to ensure that the rights of the accused and the interest of the society are balanced in equal measure and thereby subserve the interest of justice.



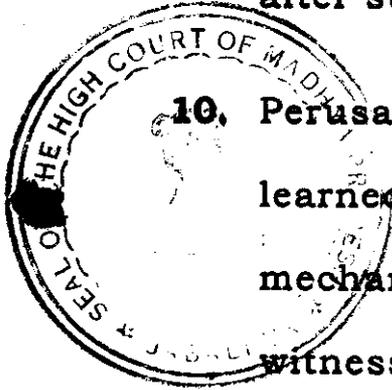
7. Though, no rule of thumb exists for deciding bail applications and each case is required to be adjudged on the basis of its own peculiar facts and circumstances, it is essential for the courts to bear in mind that the continued pre-trial incarceration of an accused person may violate his right to a speedy trial which is more undesirable than keeping a person in continuous incarceration before he is held guilty. A substantial number of the cases in which bail is denied to the accused are offences relating to the human body. In such cases, the accused is invariably a onetime

offender and amongst them, several cases are crimes of passion, committed on the spur of the moment without premeditation.

8. It has been seen by this Court that there are several cases, like the cases at hand, where this court dismisses a bail application, taking cognizance of the facts and circumstances of the case and sometimes on account of the applicant/accused withdrawing the case from the Court, where liberty is given to the accused to approach the court again after a particular witness, a prosecutrix or material witnesses of the case is examined. Thereafter, it is seen that in such cases, the witnesses who needs to be examined before the Trial Court, whereafter only, the accused can once again agitate his plea for bail, the witnesses never turn up before the Trial Court despite repeated attempts to secure their presence. Sometimes, several months to more than a year pass during which the accused continues to remain as an undertrial in judicial custody on account of the non-examination of the material witnesses before the Trial Court.



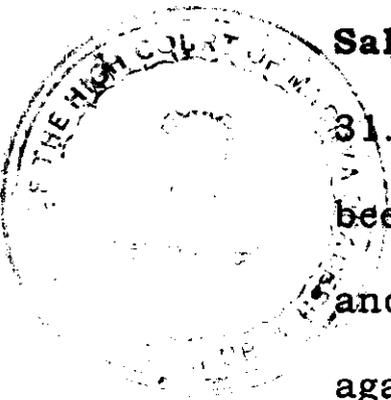
9. This creates an impression that (a) that the summons being issued by the Trial Court never get served upon the witnesses, (b) the witnesses deliberately make themselves unavailable in order to defeat service of summons upon them and thereby ensure the continued judicial custody of the accused or, (c) do not turn up before the trial court even after summons are served upon them.



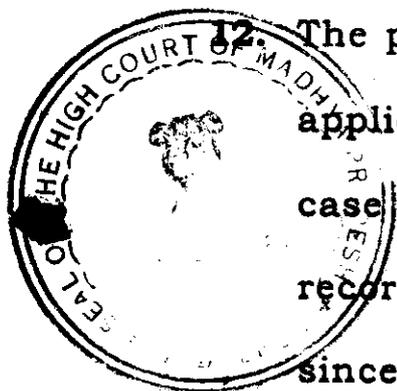
10. Perusal of the record of proceedings before the learned trial Court reveals that the trial Court mechanically keeps issuing process to the witnesses to secure their presence and very rarely does it resort to any coercive action. Such a situation before the trial Court reduces the right to a speedy trial of the accused to a joke. This Court has also seen cases where for relatively minor offences, the first application for bail before this Court is preferred by the accused after more than two years of incarceration as an undertrial. The delay in approaching the High Court by the accused in such cases itself reflects the lack of wherewithal of the accused to seek legal

remedy. The present situation does not secure the ends of justice. Justice cannot mean an attribution of overbearing and unrealistic importance to the wellbeing of the society at the cost of the individual's liberty. Justice can only be served if a practical balance between both is achieved.

11. The factual background of all the three cases with regard to delay in trial, speak for themselves of the situation that has been discussed hereinafter. In **M.Cr.C. No. 32718/2018**, the applicant is **Rambahor Saket**. He is in judicial custody since 31.08.2017 in Crime No.285/2017. He has been charged for offence under sections 376 and 342 of IPC and 3/4 of POCSO Act. The trial against him is going on at Tyonthar, District Rewa. This is the third application for bail filed before this Court. The first application for bail was dismissed vide order dated 03.01.2018 passed in M.Cr.C.No.18626/2017 as withdrawn, with liberty to file afresh after the statement of the prosecutrix was recorded before the trial Court. Thereafter, the second



application was moved before this Court after the passage of almost four months and the said application was also dismissed but on account of non-prosecution, vide order dated 18.05.2018 passed in M.Cr.C.No.7786/2018. Thereafter, the third application has been filed which is under consideration before this Court.



The present application has been filed by the applicant on the ground of delay in trial. The case has been pending at the stage of recording the evidence for the prosecution since framing of charges on 03/01/18. In the past eleven months, not a single witness for the prosecution has been examined. On 12/01/18 the first trial programme was fixed. The dates given were 7th, 8th and 9th of March, 2018. Twelve witnesses were to be examined, four on each date. On all the three dates, none of the witnesses appeared as summons had not been served on them.

13. The second trial programme was fixed on 09/03/18 fixing 16th, 17th and 18th of May,

2018 as the dates for recording the evidence of the prosecution witnesses. Again, on those dates, none of the witnesses appeared as summons were not served on them.

14. Thereafter, the third trial programme was fixed on 18/05/18 and the case was fixed for 18th, 19th and 20th of July, 2018. On 18/07/18 none of the witnesses appeared before the trial Court and the prosecutor was also on leave. On 19th and 20th also, no progress was made, as no witness appeared.

15. On 20th of July 2018, fourth trial programme was fixed by the learned trial Court. The dates fixed for the evidence of the prosecution witnesses were 26th, 27th and 28th of September, 2018. On 26th of September, 2018 no witness appeared and for the first time after a passage of nine months after framing of charges, the Court issued bailable warrant of Rs.50/- against the witnesses. On 27th also, no witness appeared and the trial Court calls for the explanation from the Investigating Officer. On 28th of September, 2018 no



witness, appeared and the fifth trial programme was prepared by the learned trial Court fixing 22nd and 23rd of October, 2018 as the dates for recording the statements of the prosecution witnesses. On 22nd and on 23rd of October, 2018 again no prosecution witness appeared.



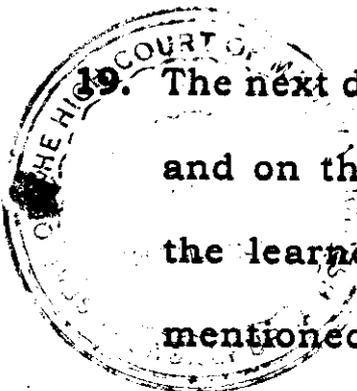
16. Thereafter, the trial Court prepared the sixth trial programme on 23.10.2018 fixing 19th and 20th of November, 2018. On these dates also, none of the witnesses appeared on behalf of the prosecution. As regards the oral submissions made by the Ld. Counsel for the applicant relating to the sixth trial programme fixed by the trial Court on 23.10.2018, fixing 19 and 20th of November, 2018 as the date for the trial, learned counsel for the applicant submits that he does not have the order sheets of the learned court below to substantiate his statement in Court and the same has been made upon instruction that he has received from the learned counsel conducting the trial before the trial Court, which he believes to be true. Thereafter, learned counsel for the

applicant has no instructions as to the present status of the case. Learned counsel for the State has submitted that the prosecutrix in this case is a thirteen-year-old child, who has indicted the applicant herein in her statement recorded under Section 164 of Cr.P.C.

17. M.Cr.C.No.25031/2018 has been moved by the applicant **Balwan @ Balman Singh** and **M.Cr.C No. 17896/2018** has been filed by applicant **Aleem @ Annu Khan** both these applications are connected as they arise from the same FIR. The applicants are in judicial custody since 26/12/17. The offences for which they have been charged for are under sections 363, 366, 344, 376-D/34 of IPC and section 5/6 of POCSO Act. This case is pending trial before the Sessions Court at Katni. This is the first application for bail under section 439 of Cr.P.C.

18. Besides the merit of the case, the learned counsels for the applicants have pressed for bail on ground of delayed trial. The record of proceedings of the learned trial Court filed by

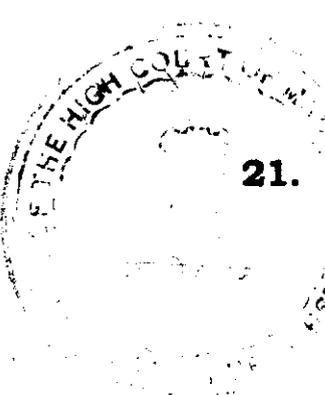
the applicants go to reveal that on 20/02/18, the charge sheet was filed by the police against the applicants herein before the court of learned Special Judge (POCSO). Cognizance was taken and a copy of the charge sheet was handed over to the learned counsels for the accused. The next date was fixed for 19/03/18. On 19/03/18, the accused were not produced from jail and their counsels prayed for time to argue on charge.



19. The next date fixed by the Court was 22/03/18 and on that day, the charges were framed by the learned Trial Court for offences already mentioned hereinabove. The trial programme prepared by the prosecution was accepted and summons were issued to the prosecutrix and her parents to appear as witnesses on 20/04/18. On 20/04/18, the record of proceedings of the trial court reflects that the summons itself were not issued to the prosecutrix and to the witnesses Premlata and Ramesh as was required by the order dated 22/03/18. Thereafter, the court directed that the summons be issued to the witnesses and

the case was fixed for the evidence of the prosecutrix and her parents on 22/05/18.

20. On 22/05/18, the court records that the summons issued to the witnesses have not been returned to the Court after service and, therefore, directed that fresh summons be issued and listed the case for hearing on 15/06/18. The order sheet of the learned trial Court dated 15/06/18 reveals that summons issued to the witnesses were not received by the court after service and therefore, it once again ordered the issuance of summons to the witnesses and listed the case on 11/07/18.

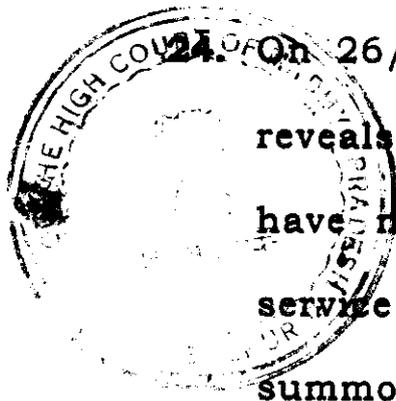


21. On 11/07/18, the learned Trial Court records that the summons which were to be issued to the witnesses as required by the order dated 15/06/18 have not been issued at all and, therefore, the court directed the issuance of fresh summons and listed the case on 04/08/18.

22. On 04/08/18, the record of proceedings reveals that the summons issued to the witnesses were not received by the court after

service and so learned trial court issued fresh summons yet again and listed the case on 27/08/18.

23. The order-sheet dated 27/08/18 of the learned trial Court reveals that the Presiding Officer was on leave and the link judge has recorded that the summons issued to the witnesses were not received by the court after service and so yet again issued summons and listed the case for recording the evidence of the witnesses on 26/09/18.



24. On 26/09/18, the record of the trial Court reveals that the summons issued to witnesses have not been received by the court after service and this time directed that the summons be served on the witnesses through the office of the Superintendent of Police and listed the case for 12/10/18.

25. On 12/10/18, learned trial Court has recorded that the summons issued to the witnesses have not been received by the court after service and once again directed that summons be served upon the witnesses through the

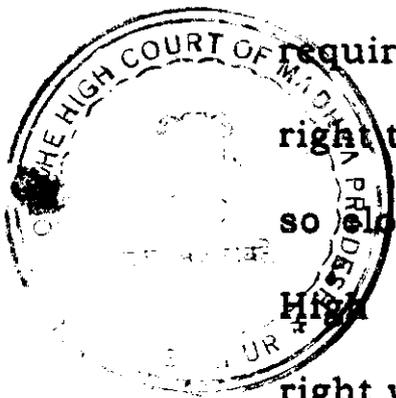
office of Superintendent of Police and then listed the case for 05/11/18 for recording the statement of the witnesses.

26. The account that has been recorded by this Court with regard to the proceedings before the learned trial Court presents a shocking picture that even after the passage of nine months after the filing of the charge-sheet, not a single witness for the prosecution has been examined. On two occasions, the trial court records that the summons which were required to be issued by the previous order were never issued by the court at all and yet the court does not enquire as to why its order was not complied with and neither does it take action against the person who failed to issue the summons.

27. The first time that the learned trial court has taken resort to serve the summons through the office of the Superintendent of Police was after the passage of seven months on 26/09/18 which was followed up again on 12/10/18. The proceedings against the applicants and all

such other accused persons who may be languishing under similar conditions reflects judicial apathy, undoubtedly unintentional, not just at the level of the District Judiciary but this Court also where such cases are dealt on an ad hoc basis instead of addressing the malady itself. Willy nilly we dispense with justice instead of dispensing justice.

28. The record of proceedings of both the applications which have been reproduced hereinabove, speak up of a malady which requires to be redressed at the earliest else the right to a speedy trial spoken of and discussed so eloquently by the Supreme Court and the High Courts, which have equated the said right with right to life itself, will be reduced to discussions in the drawing rooms and lecture halls without passing it on effectively to the accused. It is not sufficient for the courts to be merely cognizant about the fact that under trials languish inordinately in jail on account of the delay in trial which is most pronounced at the stage of recording the statement of the prosecution witnesses. It is the responsibility

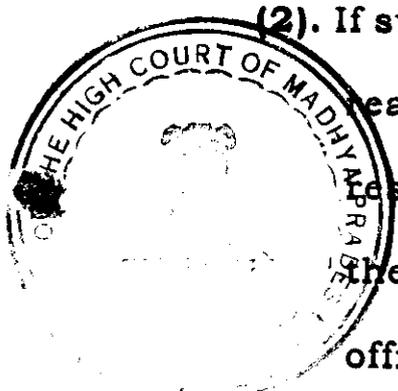


of the Trial Court to secure the presence of the prosecution witnesses at the earliest and record their statements within the shortest time possible. The protraction of the trial is most evident at the stage of recording of the prosecution witnesses. Once the statement of the prosecution witnesses has been recorded by the trial court, then all that is left is recording the statement of the accused under section 313 of Cr.P.C., production of defence witnesses and thereafter the final arguments. Very rarely does the defence produce any witnesses from its side. The statement of the accused under section 313 Cr.P.C is also not a stage that consumes excessive time thus, the most identifiable part of the criminal trial which results in inordinate delay in its disposal and affects the right to a speedy trial of the under trial, is the stage of recording the prosecution evidence.

29. Under the circumstances, this Court feels that laying down certain broad guidelines which the trial court must make all efforts to follow *mutatis mutandis*, tailoring the same to special

circumstances that a particular case may present, would be beneficial for all concerned. These guidelines are not exhaustive and are illustrative, which this court hopes, if put into practice, may result in the expeditious completion of prosecution evidence.

(1). After framing of charges against the accused, summons be issued to the eye witnesses or, if its a case where there are no eye witnesses, then to those witnesses who are most material to prove the case of the prosecution,



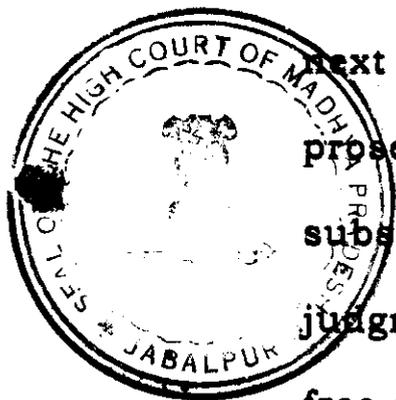
(2). If summons are returned unserved for whatever reasons, instead of wasting further time by resorting to the same process time and again, the next summons must be served through the office of Superintendent of Police to the witnesses where the Trial Court is situated in the District Headquarters and through the office of the SDOP, in the Tahsil Courts. If those summons are also not served, the report of the police must reflect the reasons why they have not been served,

(3). If the reasons given by the police in the report returning the summons unserved, reflect that

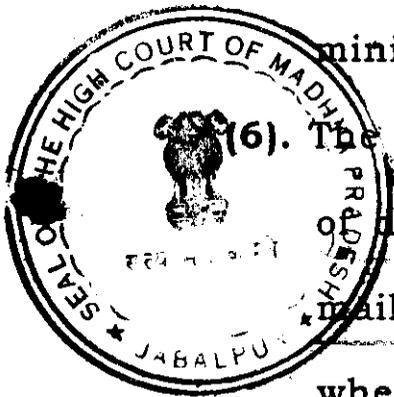
the witnesses are unreachable/untraceable and that service cannot be effected on them on account of their non-availability and there is no prospect of them being found within reasonable time, then the trial court must skip those witnesses and proceed to the next set of witnesses by issuing summons to them. The Trial Court must realise that the case of the prosecution is actually the case of the State through the police, against the accused persons. It is the duty of the police to produce their witnesses before the trial Court. By skipping a set of witnesses, the court is not closing their evidence but merely keeping them in abeyance, to be recorded as and when they are found by the police or appear on their own before the Trial Court at any stage before the conclusion of the trial. In such a case, skipping of such witnesses would necessarily need the consent of Counsel for the defence and if opposed by the defence Counsel, for whatever strategic reasons the defence may have, then the court may issue fresh summons to the same set of witnesses. However, in such

a situation, the delay in conduct of trial would then be on account of the conduct of the defence for which accused cannot claim violation of the right to a speedy trial at a later point of time,

- (4). If material witnesses cannot be procured without delay, the court must explore the possibility of examining formal witnesses and expert witnesses if any and conclude the same. Thereafter, the remaining witnesses for the prosecution who have not been examined on account of the inability of the police to produce them for reasons reflected in the report of the police, the court must close the case of the prosecution and proceed to the next stage of the case. However, if any of the prosecution witnesses appears at a subsequent stage, before passing of the judgment by the trial Court, the court shall be free to exercise its jurisdiction under section 311 Cr.P.C. and record their statements in the interest of justice after considering opposition of the defence counsel, if any.



(5). The police on its part, must secure the mobile number and E-mails ids of all witnesses, if they possess the same. This must be retained by them in the inner case diary to be used for transmitting the summons or messaging the witness regarding their date and time of appearance before the Trial Court to testify. The police must take care that the aforementioned details are NOT disclosed in the charge-sheet in order to ensure that the access of the accused to the witnesses is minimised to the greatest extent possible.



(6). The Trial Court must also resort to the option of delivering summons through SMS and E-mail in addition to the conventional process, wherever possible. The purpose of the endeavour must be to secure the presence of the witnesses in the shortest possible time to complete the trial. The Courts must be bear in mind that as long as the trial is in progress, presumption is always of innocence and not of guilt.

(7). It shall not be open to the police to put forward reasons of law and order work or any other of

their functions as excuses for not complying with the order of the Trial Court to secure the presence of their witness. Such non compliance on the part of the police may constitute contempt of the Trial Court's order, and the Trial Court shall be at liberty to initiate such proceedings against the police if it is not satisfied with the reply of the police for not complying with the order passed by it.

30. Under the circumstances, on account of the inordinate delay in recording the statement of witnesses, all the three applications are allowed and it is directed that the applicants **Balman @ Balman Singh, Aleem @ Annu Khan and Rambahor Saket** shall be enlarged on bail upon their furnishing a personal bond in the sum of **Rs. 50,000/- (Rupees Fifty Thousand only) each** with one solvent surety in the like amount **each** to the satisfaction of the Trial Court.



31. A copy of this order be placed before the Registrar General of this court for transmission to all the Judges of the District Judiciary. A copy of this order

be also sent to the Director General of Police, Madhya Pradesh.

Certified copy as per rules.

Sd/-
(Atul Sreedharan)
Judge

