

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

M.Cr.C. No. 6468 of 2016

AFR

Mohar Singh
Vs.
State of M.P.

(JUDGE)

For the applicant : Shri V.K. Saxena, senior counsel with
Shri R.V.S. Ghuraiya, counsel
For the State/respondent: Shri J.M. Sahani, Panel Lawyer

PRESENT : HON'BLE MR. JUSTICE N.K. GUPTA

ORDER
(06/09/2016)

This order shall consider the maintainability as well as merits of present application under Section 439 of the Cr.P.C.

(2) This is the repeat application of the applicant, whereas his previous application was dismissed on 21.03.2016 being withdrawn.

(3) The applicant is in custody since 05.12.2015 relating to Crime No.94/2015 registered at Police Station – Maharajpura District Gwalior for the offence punishable under Sections 294, 302/34 of IPC and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter it would be referred as “Special Act”).

(4) First of all, the objection raised by the learned counsel for the State is to be considered as to whether the application under Section 439 of the Cr.P.C. can be directly entertained for the offences of the Special Act in the light of newly enacted provision under Section 14-A of the Special Act.

(5) Before considering the legal aspect, it would be appropriate

to refer the provision under Section 14-A of the Special Act as under:-

“14-A. Appeals.-- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(2) Notwithstanding anything contained in sub-section (3) of section 378 of the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days:

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.”.

The provision under Section 14-A(2) of the Special Act provides for appeal against the order of Special Court dealing with the bail applications. The aforesaid amendment came into force on 26.01.2016 and, therefore, the offences committed on or after 26.01.2016 shall be governed by the provision under Section 14-A of the Special Act.

(6) The main question which arises as to whether such provision shall have its retrospective effect or not. In this connection, the judgment of the Division Bench of this Court in case of **Ramesh Chandra Shrivastava Vs. Shri Murti Ramchandrajji**” [2004 (1) MPHT 225 (DB)] may be referred in which various judgment of the Apex

Court were discussed and the Court held that every statute is *prima facie* prospective unless it is expressly made retrospective in operation. Para 7 of the aforesaid judgment is hereby reproduced as under:-

“7. It is a cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective in operation. The landmark decision in this regard is of *Keshavan Madhavan Menon v. State of Bombay*, AIR 1951 Supreme Court 128, other decisions on the point are *Janardan Reddy v. State*, AIR 1951 Supreme Court 124; and *State of Madhya Pradesh v. Rameshwar Rathod*, AIR 1990 Supreme Court 1849. Unless there are words in the statute sufficient to show the intention of the Legislature to affect the existing rights, it is deemed to be prospective. In this context, we may profitably refer the legal maxim '*nova constitutio futuris formam imponere debet non praeteritis*'. Lord Blanesburg had said that the provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment [See *Delhi Cloth Mills & General Co. Ltd. v. CIT, Delhi*, AIR 1927 PC 242]. Similarly, Lopes, L.J., has said that the law which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have retrospective effect.”

(7) It would be appropriate to refer the judgment passed by the Apex Court in case of “**Ramesh Kumar Soni Vs. State of Madhya Pradesh**” [AIR 2013 SC 1896], in which the Apex Court by referring its various judgments overruled the full Bench decision of this Court given in case of “**In Re: Amendment of First Scheduled of Criminal Procedure Code by Criminal Procedure Code (M.P. Amendment) Act, 2007**”, in which it is held that amendment in procedural law shall be retrospective if no vested right of litigant is involved.

(8) In the light of the aforesaid decisions, the position of the present amendment is to be assessed to find out that the provision under Section 14-A of the Special Act is only a procedural provision or not. Before enactment of this provision, when bail application of a litigant was accepted or dismissed then the litigant had a right to file a bail application before the High Court. With the present amendment, the litigant cannot file an appeal under Section 14-A of the Special Act relating to that order of the trial Court which is already considered by the High Court while considering the bail application. Also as per the principles of judicial discipline when bail application was rejected by the High Court, the trial Court cannot entertain the same, it cannot act as a superior authority than the High Court. If the provision under Section 14-A of the Special Act is applied retrospectively then the litigant cannot file an appeal against the order passed by the trial Court which was already considered by the High Court as bail application and he would be deprived of the right to file a fresh bail application. Under these circumstances, the situation shall arise that the litigant had no remedy for grant of bail in such repeat applications. Under these circumstances, the provision under Section 14-A of the Special Act is not a procedural law. It affects the right of the litigant to file a repeat bail application before the High court. Therefore, it cannot be considered as a provision of procedural law only. Hence, the provision under Section 14-A of the Special Act shall not have any retrospective effect and High Court shall continue to hear the bail applications for cases in which the incident took place prior to the date of enforcement of the new amendment, i.e., 26.01.2016.

(9) The present matter relates to the case in which date of incident was of the year 2015 and, therefore, the bail application filed by the applicant can be entertained by this Court.

(10) Heard the learned counsel for the parties.

(11) Learned counsel for the applicant submits that the applicant

is a youth of 26 years, who has no criminal past alleged against him. At present, eyewitnesses namely Dhadhu @ Dharmendra (PW-1) brother of the deceased, Jallu (PW-2) father of the deceased and Phoolo Bai (PW-3) mother of the deceased are examined and they have turned hostile. Hence, there is no ocular evidence in the case. Though the FIR was lodged by the deceased Chhotelal himself but it was opined by the doctor that due to health condition of the deceased Chhotelal, he was not in a position to give the statement and, therefore, such FIR (as dying declaration) is highly doubtful. The applicant is in custody since 05.12.2015, whereas chain of circumstantial evidence is broken and the applicant cannot be connected with the crime. Under these circumstances, the applicant prays for bail.

(12) On the other hand, learned Panel Lawyer submits that the FIR was lodged soon after the incident and it was not possible that the deceased Chhotelal was not conscious at that time. When he was taken to the hospital then too much blood was oozed and, therefore, after some time if he became unconscious and his dying declaration could not be recorded in the hospital due to unconsciousness then it cannot be said that at the time of registration of the FIR, he was not conscious and such evidence cannot be discarded. It is also submitted that the appreciation of evidence cannot be done at this stage. Consequently, it is prayed that the applicant may not be released on bail.

(13) After considering the submissions made by the learned counsel for the parties and looking to the facts and circumstances of the case, without expressing any view on the merits of the case, I am of the view that it is not a good case in which the applicant may be released on bail. Consequently, application under Section 439 of the Cr.P.C. filed by the **applicant – Mohar Singh** is hereby dismissed.

(N.K. Gupta)
Judge