

THE HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

SB:- Hon'ble Shri Justice G. S. Ahluwalia

MCRC 26746/2018

Premnarayan Yadav

Vs.

State of MP & another

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Shri N. S.Tomar, counsel for the applicant.
Shri RVS Ghuraiya, Public Prosecutor for the respondent
No.1/State.

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O R D E R

(Passed on 06/09/2018)

This application under Section 439(2) of CrPC has been filed for cancellation of bail granted to the respondent No.2 by this Court by order dated 05/12/2008 passed in MCRC No.7739/2008, on the ground that the respondent No.2 has misused his liberty and is terrorizing the people in order to grab their land and money.

The necessary facts for the disposal of the present application in short are that the respondent No.2 Gyan Singh is facing trial for offence under Sections 279, 337, 304-A , 302, 147, 148, 149 and 307 of IPC in Sessions Trial No.130/2008 pending in the Court of Additional Sessions Judge to the Court of First Additional Sessions Judge, Link Court Chanderi, District Ashok Nagar.

This Court by order dated 13/07/2018 had observed as under:-

" It is really shocking that the offence is of the year 2007 but the trial is still pending and has not come to an end. Therefore, the trial Court is directed to submit the status report of the trial along with complete order sheets right from the date of

committal."

In compliance of this order, the scanned copies of the order sheets of the trial Court have been sent. The order sheets depict a very sorry state of affairs, where the Presiding Officer has taken this case in a very casual manner and has adjourned the case only for the sake of adjournment.

At present, from the year 2008 till 13/04/2017, the trial remained pending before the Court of First Additional Sessions Judge, Mungawali, District Ashok Nagar. However, it appears that almost, on all the occasions the witnesses did not appear and even the warrants/summons were also not returned back either served or unserved. In spite of the fact that the trial was pending from the year 2008, no effective steps were taken by the Presiding Officer to ensure that the trial is concluded as early as possible. Thereafter, it appears that on 28/04/2017, the case was taken up for the first time in the Link Court of Chanderi, District Ashok Nagar and thereafter on 18/05/2017, 20/06/2017, 24/07/2017, 27/08/2017, 26/09/2017, 24/10/2017, 14/11/2017, 05/12/2017, 19/12/2017, 16/01/2018, 06/02/2018, 20/03/2018, 20/04/2018, 22/05/2018, 19/06/2018, 17/07/2018, the case was taken up and thereafter, the case was fixed for 17/07/2018. However, the order sheet of 17/07/2018 has not been sent. Therefore, it is not clear that what had transpired on the said date. However, on none of the above-mentioned dates, even a single witness was present and the case was adjourned without taking any effective steps by the trial Court with regard to non-appearance of the witnesses. The trial Court has sent its reply dated 27/07/2018, in which it is mentioned that the

record of the case was received in the Link Court Chanderi and it was taken up for the first time on 28/04/2017. The Present Presiding Judge has taken charge of Link Court Chanderi on 16/04/2018 and for the first time, the case was listed before him on 19/06/2018 and theailable warrants of arrest were issued for ensuring the appearance of the witnesses. It is also mentioned that the Link Court is working only for 15 days at Chanderi. It is further mentioned that full-time APP is not posted in the Link Court Chanderi and he appears before the Link Court Chanderi only for three days in a week and on some occasions, he also remains absent, as a result of which only six days in a month are available for recording the evidence of the witnesses. It is also mentioned that after his joining at Link Court, Chanderi, the case was fixed for recording of evidence on 17/07/2018, however, on the said date, none of the witnesses was present and accordingly, a letter has been sent to the SHO of concerning Police Station separately for ensuring the appearance of the witnesses. **At present, this Court is not concerned with the manner in which the Presiding Judges have dealt with this case. It is for the Registry to look into the matter.** However, this Court cannot keep its eyes closed to the fact that although the trial is pending from the year 2008 and more than 10 years have passed, but no substantive progress has taken place, therefore, the trial Court is directed to take up the matter on day-to-day basis. The Superintendent of Police, Ashok Nagar is also directed to look into the matter personally and to ensure that theailable warrants/summons/non-ailable warrants issued against the witnesses are served promptly and he shall ensure that the witnesses do appear before the trial Court

for giving the evidence. The trial Judge is also directed to submit the report regarding progress of trial after every 15 days to the Principal Registrar of this Court as well as to the Sessions Judge, Ashok Nagar and in case of any lapses on the part of the Presiding Judge, then the Principal Registrar of this Court as well as District and Sessions Judge, Ashok Nagar are requested to look into the matter personally and to issue necessary instruction, if so required, to ensure the early disposal of the trial. It is made clear that the above direction shall be followed strictly without any fault on the part of the Presiding Judge or on the part of the Superintendent of Police, Ashok Nagar.

So far as the question of cancellation of bail of the respondent No.2 is concerned, it is submitted by the counsel for the applicant that the respondent no.2 is actively involved in grabbing the lands and demanding money. To substantiate his submission, the counsel for the applicant has relied upon the the FIR registered in Crime No.91/2018 at Police Station Bhangarh, District Sagar for offence under Sections 294, 323, 506, 327, 34 of IPC. Similarly, another FIR has been relied upon, which has been registered in Crime No.110/2018 at Police Station Bhangarh, District Sagar for offence under Sections 327, 447, 294, 506, 34 of IPC, on the report of one Vinod Kumar Jain.

The respondent No.2 has filed his reply and has submitted that after his release on bail, he has not committed any offence of similar in nature. However, it is accepted in the reply that in the year 2012, Crime No.173/2012 was registered against the respondent No.2 and the trial is pending. It is further submitted that the land of the applicant is adjoining to the land of one Shivraj Singh

Yadav and Shivraj Singh Yadav has given the said land to the respondent No.2 on contract basis, on which the applicant wanted to take forcible possession and accordingly, a false report was lodged. The respondent No.2 had filed an application for grant of anticipatory bail, which was granted by the Second Additional Sessions Judge, Sagar by order dated 23/06/2018 passed in Bail Application No. 93/2018. The said application was filed seeking anticipatory bail in Crime No.91/2018. The copy of the order has been placed on record. The Second Additional Sessions Judge, Sagar has granted anticipatory bail to the respondent No.2 by considering the fact that the respondent no.2 has no criminal antecedent and the matter is triable by the Court of Magistrate and according to the respondent No.2, the dispute is of civil in nature. Unfortunately, the ground on which the anticipatory bail was granted to the respondent No.2 is not factually correct. According to the respondent No.2 himself, he is facing trial in Crime No.173/2012. Undisputedly, the respondent No.2 is facing trial in the present case, which has been registered under different Sections of IPC, including Section 302 of IPC but in spite of the fact that the respondent no.2 was aware that he has a criminal antecedent but he projected before the Second Additional Sessions Judge, Sagar that there is no criminal case against him and accordingly, at present, he has obtained the anticipatory bail by suppressing the material facts.

Be that whatever it may be.

This Court is not considering the correctness and validity of the order dated 23/06/2018 by which the respondent no.2 has been granted anticipatory bail in Crime

No.91/2018 registered at Police Station Bhangarh, District Sagar. The suppression of certain facts while arguing the application for anticipatory bail in Crime No.91/2018 have been taken note of by this Court, only because of the fact that the respondent No.2 had claimed in his reply that the allegations made in Crime No.91/2018 are, prima facie, incorrect because of the fact that he has been granted anticipatory bail.

If the conduct of the respondent No.2 after his release on bail in the year 2008 is concerned, then it is clear that after his release, at least three more criminal cases i.e. Crime No.173/2012, Crime No.91/2018 and Crime No.110/2018 have been registered by the police against the respondent No.2. Thus, it is clear that the respondent No.2 has misused his liberty after his release on bail by this Court by order dated 05/12/2008. Under these circumstances, this Court is of the considered opinion that the bail granted to the respondent No.2 by order dated 05/12/2008 passed in MCRC No.7739/2008 is liable to be cancelled. Accordingly, the order dated 05/12/2008 passed by this Court in MCRC No.7739/2008 is hereby recalled. The respondent No.2 is directed to immediately surrender before the trial Court by the next date of hearing.

With the aforesaid direction, this application is disposed of.

(G. S.Ahluwalia)
Judge