

THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No. 36488/2020
Phool Singh vs. State of MP

Gwalior, Dated :01/10/2020

Shri S.K. Tiwari, Counsel for the applicant

Shri Abhishek Sharma, Counsel for the State

In compliance of order dated 30-09-2020, Shri Vinayak Verma, Superintendent of Police, Vidisha has joined the Court Proceedings through Video Conferencing from his office at Vidisha.

Heard through Video Conferencing.

This is Seventh application filed under Section 439 of Cr.P.C. for grant of bail.

The applicant has been arrested on 22-12-2016 in connection with Crime No. 254/2016, registered by Police Station Lateri, Distt. Vidisha for offence under Sections 327/34, 506-B,294,323,302/34 of I.P.C.

This application has been filed mainly on the ground of delay in trial.

This case projects a very sorry state of affairs in the District of Vidisha.

Earlier, the applicant had filed an application for grant of bail on the ground of delay, which was registered as M.Cr.C. No. 37605 of 2019. This Court found that the Police Department is grossly negligent in executing the Summons/Bailable Warrants/Warrants issued against the witnesses, including the Doctors and Police

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witnesses, therefore, the Superintendent of Police, Vidisha was directed to appear before the Court and to explain such gross negligence on the part of his sub-ordinates.

Shri Vinayak Verma, S.P., Vidisha had appeared before this Court on 16-9-2019 and assured the Court, that in future, there shall not be any negligence on the part of his sub-ordinates, and therefore, the following order was passed :

A written explanation of Superintendent of Police, Vidisha has been filed. It is mentioned that although the warrants/summons/bailable warrants were issued by the Court but Head Constable Mushraq Khan and concerning Court Moharrir Constable Mukesh Rajak have failed to enter the same in the register, as a result of which, there was dereliction of duties on part of both these employees and thus they have been placed under suspension and SDO(P) has been directed to conduct a preliminary enquiry in the matter within a period of seven days and to submit the report, so that the departmental enquiry can be initiated against them.

It is further submitted by Shri Verma that now the warrants/summons/bailable warrants shall be served without any fault.

In view of the written explanation as well as the verbal assurance given by Shri Verma, it is held that since the employees who were at fault have been placed under suspension and a preliminary enquiry has been ordered, therefore, at this stage, nothing more is required on this issue.

So far as the non-execution of warrants/summons/bailable warrants is concerned, in view of the verbal assurance given by Shri Verma, no further action is required to be taken. However, Shri Verma is directed to submit the details of the further proceedings in the departmental action which is proposed against two police employees.

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The compliance report be submitted before the Principal Registrar of this Court on or before 1.10.2019.

In view of the submissions made by Shri Verma that now the witnesses shall be served within time, this Court is of the considered opinion that nothing remains in the bail application. Accordingly, it is dismissed.

In the present application, it is the contention of the applicant, that the things did not improve, and once again, the summons/bailable warrants/warrants issued against the Doctors and Police personals were not returned back either served or unserved. The applicant has also filed a copy of the order sheets of the Trial Court, therefore, the Superintendent of Police, Vidisha was directed to appear before the Court through Video Conferencing.

It is submitted by Shri Verma, S.P., Vidisha, that in fact there is no negligence on the part of the Police witnesses and in order to substantiate his contentions, Shri Verma, S.P., Vidisha, went to the extent of challenging the correctness of the orders passed by the Trial Court. Accordingly, he was directed to refer to each and every ordersheet of the Trial Court, and to submit his explanation.

Shri Verma, S.P., Vidisha, had given an assurance in M.Cr.C. No. 37605 of 2019 on 16-9-2019. Thereafter, the Trial was listed on 19-9-2019, but still the warrants issued against the witnesses were not returned back either served or unserved. Thus, it is clear that

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after giving assurance to this Court, Shri Verma, S.P., Vidisha, did not take any pains to issue necessary instructions to his sub-ordinates for compliance of his undertaking given before the Court.

Thereafter, the case was listed on 23-10-2019, one witness was examined and another witness namely Dr. Rajendra did not appear inspite of service ofailable warrant. Accordingly, the case was adjourned to 4-12-2019.

On 4-12-2019, Doctor Rajendra and police witnesses were not present and therefore, fresh arrest warrants were issued, and the case was fixed for 15-1-2020. Challenging the correctness of the ordersheet dated 4-12-2019, it is submitted by Shri Verma, S.P., Vidisha, that in fact Dr. Rajendra and Sub-Inspector were present before the Court, however, due to reference on the sad demise of one Advocate, the Court work was suspended. When Shri Verma, S.P., Vidisha, was directed to point out from the ordersheet as to whether the presence of the above mentioned two witnesses was mentioned or not, then after going through the ordersheet he fairly conceded that the presece of these two witnesses is not mentioned. Further, he also accepted that these two witnesses have also not signed on the margin of the ordersheet. It is a matter of common knowledge, that if a witness is present and for any reason, the Court is unable to record his evidence, then he is bound over for the next day and fresh

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arrest warrants are never issued. Thus, it is clear that Shri Verma, S.P., Vidisha, without any basis, tried to plead that the Trial Court had recorded incorrect ordersheet.

On 25-1-2020, a radio message was produced before the Trial Court to the effect that A.S.I. Ram Singh was informed, but he did not appear. Similarly, an information was also given that due to local fate, the notices on Constable Jai Singh and Lalaram could not be served.

On 22-2-2020, the warrants issued against A.S.I. Ram Sigh, Constable Jai Singh and Lalaram were not received back either served or unserved and accordingly, fresh warrants of arrest were issued. Challenging the correctness of this order sheet, it is submitted by Shri Verma, S.P., Vidisha, that infact the warrant of arrest were served. But could not explain as to why the warrants of arrest were not deposited in the Court. Be that whatever it may be. However, Shri Verma, S.P., Vidisha, could not explain as to why the police witnesses did not appear before the Court.

Thereafter, the case was taken up on 7-3-2020, and on the said date, constable Jai Singh was examined but neither Doctor Rajendra, nor A.S.I. Ram Singh and Head Constable Lalaram appeared before the Trial Court and accordingly, fresh warrants of arrest were issued and the case was fixed for 3-4-2020 but it appears that due to

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imposition of Country wide lockdown by the Central Govt., even the Courts were closed, therefore, no proceedings could take place.

It is submitted by Shri Verma, S.P., Vidisha, that on 7-3-2020, at least one police constable had appeared but could not explain as to why his remaining two police witnesses namely A.S.I. Ram Singh and Constable Lalaram did not appear before the Trial Court. When the attention of Shri Verma, S.P., Vidisha was drawn to the evidence of Jai Singh (P.W. 6) that he was merely a seizure witness of a Viscera and a packet which was brought by Constable Kapoor Singh from the Hospital and was handed over to Head Constable Lalaram and for this evidence, months were taken by the prosecution, then he fairly submitted that it should not have happen.

However, it is submitted by Shri Verma, S.P., Vidisha, that although the police department is responsible for the delay upto the month of March 2020 but since, the Trial Court was closed on 3-4-2020, otherwise, his remaining two police witnesses would have appeared. Shri Verma, S.P., Vidisha, could not point any reason for his confidence, because he has fairly conceded that after giving an assurance before this Court on 16-9-2019, he did not monitor this case. He further admitted that in compliance of the departmental circular dated 30-3-2019, even his gazetted officer, did not monitor as to whether the police witnesses are appearing before the Court or

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not? The manner in which the submission was made by Shri Verma, S.P., Vidisha, it is clear that he was trying to put blame on the Court, that since, the Courts were closed on 3-4-2020, therefore, prosecution witnesses could not be examined.

Shri Verma, S.P., Vidisha was asked whether he is challenging the correctness of the Country wide lockdown imposed by the Central Govt. on 25-3-2020?

Accordingly, he was directed to file his explanation in the form of Affidavit, because Shri Verma, S.P., Vidisha had not only gone to the extent of challenging the correctness of the ordersheets of the Trial Court, and now he had gone to the extent of challenging the correctness of the Nationwide Lockdown imposed by the Central Govt.

Then realizing the repercussions of his submissions, he submitted that he never intended to challenge the Country wide lockdown imposed by the Central Govt. and he never intended to undermine the authority of the Court, but admitted that his submission was out of context and unwarranted and tendered his unconditional apology repeatedly for such wild and baseless submission. However, he submitted that he may not be compelled to file his written explanation and he may be permitted to withdraw his statement.

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Be that as it may.

One thing is clear that after giving assurance before this Court on 16-9-2019, neither Shri Verma, S.P., Vidisha took plains to monitor the present case, nor his Gazetted Officer acted in compliance of circular dated 30-3-2019 issued by the Police Headquarter. In spite of his gross negligent and irresponsible conduct after 16-9-2019, Shri Verma, S.P., Vidisha tried to challenge the correctness of the ordersheets of the Trial Court as well as tried to challenge the Countrywide lockdown imposed by the Central Govt. and also tried to undermine the authority of the Court.

Therefore, it is clear that Shri Verma, S.P., Vidisha has no respect for the Fundamental Right of an accused of speedy trial as enshrined under Article 21 of the Constitution of India and did not show any remorse for his irresponsible and negligent act after 16-9-2019.

Since, Shri Verma, S.P., Vidisha has blatantly flouted his assurance given before this Court on 16-9-2019, therefore, before considering as to whether a Contempt Proceeding be initiated against him or not, it would be proper to consider the bail application of the applicant.

The applicant is in jail from 22-12-2016 and the allegations against him are that he along with co-accused demanded money from

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the deceased Mukesh for purchasing liquor and when he refused to give money, then he was assaulted on his head by means of a lathi, as a result of which he died.

From the documents filed along with the bail application, it is clear that Gabba (P.W. 4) was examined on 10-7-2018, thereafter, Dr. Gaurav (P.W.5) was examined on 23-10-2019 and Constable Jai Singh (P.W.6) was examined on 7-3-2020. Thus, it is clear that the prosecution did not show any interest in early disposal of the trial and has deliberately kept the same pending by not serving the summons/bailable warrants/warrants and inspite of undertaking given by Shri Verma, S.P., Vidisha on 16-9-2019, no steps were taken by him to honor his own undertaking.

Thus, it is clear that the prosecution is responsible for the delay in trial.

An undertrial cannot be kept in jail for an unlimited period at the mercy of the prosecution. Under these circumstances, when the applicant is in jail from 22-12-2016 and the prosecution has not shown any interest in early disposal of the Trial, this Court is left with no other option, but to allow the application for grant of bail.

The Supreme Court by order dated 23-3-2020 passed in the case of **IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS** in **SUO MOTU W.P. (C) No. 1/2020** has directed all the

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States to constitute a High Powered Committee to consider the release of prisoners in order to decongest the prisons. The Supreme Court has observed as under :

“The issue of overcrowding of prisons is a matter of serious concern particularly in the present context of the pandemic of Corona Virus (COVID – 19).

Having regard to the provisions of Article 21 of the Constitution of India, it has become imperative to ensure that the spread of the Corona Virus within the prisons is controlled.

We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.

It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.”

Considering the allegations, as well as considering the fact **that the prosecution is responsible for the unexplained delay in**

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trial specifically when only two witnesses were examined after 10-7-2018, and without commenting on the merits of the case, it is directed that the applicant be released on bail, on furnishing the personal bond in the sum of **Rs. 1,00,000 (Rupees One Lac)** to the satisfaction of the Trial Court or C.J.M. or Remand Magistrate (Whosoever is available). The applicant shall also furnish an undertaking that he will abide by all the instructions which may be issued by the Central Govt./State Govt. or Local Administration (General or Specific) from time to time for combating Covid-19. *It is further directed that, the applicant shall also furnish one surety in the like amount to the satisfaction of Trial Court within a period of one month after the lock-down is completely lifted.*

The Supreme Court in the case of **IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS** by order dated **7-4-2020** has directed as under :-

"In these circumstances, we consider it appropriate to direct that Union of India shall ensure that all the prisoners having been released by the States/Union Territories are not left stranded and they are provided transportation to reach their homes or given the option to stay in temporary shelter homes for the period of lockdown.

For this purpose, the Union of India may issue appropriate directions under the Disaster Management Act, 2005 or any other law for the time being in force. We further direct that the States/Union Territories shall ensure through

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Directors General of Police to provide safe transit to the prisoners who have been released so that they may reach their homes. They shall also be given an option for staying in temporary shelter homes during the period of lockdown."

Accordingly, it is directed that before releasing the applicant, the jail authorities shall get the applicant examined by a competent Doctor and if the Doctor is of the opinion that his Corona Virus test is necessary, then the same shall be conducted. If the applicant is not found suspected of Covid19 infection or if his test report is negative, then the concerned local administration shall make necessary arrangements for sending the applicant to his house as per the directions issued by the Supreme Court in the case of IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS (Supra) , and if he is found positive then the applicant shall be immediately sent to concerning hospital for his treatment as per medical norms. The applicant is further directed to strictly follow all the instructions which may be issued by the Central Govt./State Govt. or Local Administration for combating Covid19. If it is found that the applicant has violated any of the instructions (whether general or specific) issued by the Central Govt./State Govt. or Local Administration, then this order shall automatically lose its effect, and the Local Administration/Police Authorities shall immediately take him in

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custody and would send him to the same jail from where he was released. The applicant is further directed to supply a copy of this bail order to the police station having jurisdiction over his place of residence.

The other conditions of Sections 437, 439 Cr.P.C. shall remain the same.

This order shall remain in force, till the conclusion of Trial. In case of bail jump, or violation of any of the condition(s) mentioned above, this order shall automatically lose its effect.

So far as the question of initiating Contempt Proceedings against Shri Verma, S.P. Vidisha is concerned, since, this Court has already granted bail to the applicant on the ground that the prosecution was negligent in producing his witnesses (All Govt. officials) and inspite of the undertaking given by Shri Verma, S.P. Vidisha, no steps were taken to honor the undertaking, therefore, this Court thinks it appropriate to leave it to the discretion of the Competent Authority to consider as to whether the irresponsible and negligent act of Shri Verma, S.P., Vidisha warrants any departmental action against him or not? Further, it is for the Chief Secretary, State of Madhya Pradesh and Director General of Police to consider as to whether non-appearance of Doctor and Police witnesses before the Trial Court, warrants any departmental action against them or not?

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With aforesaid observations, this application is **Allowed**.

Accordingly, the Chief Secretary, State of Madhya Pradesh is directed to keep a copy of this order in the service book of Shri Vinayak Verma, Superintendent of Police, Vidisha. Let a compliance report be filed before the Principal Registrar of this Court, within a period of 15 days from today.

Let a copy of this order be sent to the Chief Secretary, State of Madhya Pradesh and Director General of Police, State of Madhya Pradesh nor necessary information and compliance.

(G.S. Ahluwalia)
Judge