

IN THE HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE.

SINGLE BENCH : HON'BLE SHRI JUSTICE ALOK VERMA

Cr.R. No.800/2016

Sanju @ Sanjay and others

Vs.

State of M.P.

Shri Virendra Sharma, learned counsel for the applicants.
Shri M.I. Ansari, learned counsel for the complainant.
Shri Kshitij Vyas, learned counsel for the respondent/State.

ORDER

(Passed on 22/04/2017)

This revision is directed against the order passed by the learned Additional Session Judge, Mahidpur, District- Ujjain in Session Trial No.93/2016 dated 24.06.2016.

2. The facts relevant for disposal of this revision are that on 24.06.2016 only one accused Rahul was present before the court. The remaining accused were absent. An application for their personal appearance before the court was filed, which was dismissed by the court. Thereafter, the counsel Shri Kapil Upadhyay filed an application before the court for granting time to file reply and argue on an application filed by the prosecution dated 30.04.2016. This application was also dismissed and the court proceeded to dispose of the application filed by the prosecution on

30.04.2016. Copy of the application dated 30.04.2016 is on record, which shows that the application was filed stating therein that the accused were granted bail under Section 307 IPC by this Court (The High Court). Thereafter, the injured Basantibi succumbed to the injuries caused to her, and therefore, Section 302 IPC was also added and supplementary charge-sheet was filed, and therefore, it was prayed by the prosecution that the bail granted to the accused should be cancelled and they should be taken into custody.

3. Learned Additional Sessions Judge heard the counsel on this application and observed in the impugned order that as supplementary charge-sheet was filed under Section 302 IPC while earlier, the accused were granted bail by the High Court under Section 307 IPC, the accused were not released on bail under Section 302 IPC, and therefore, in such a situation, he forfeited the bail and bond of all the accused persons and issued non-bailable warrant against the accused persons, who were absent on that date. One accused Rahul was present before the court and he was taken into custody.

4. Against the impugned order, this revision is filed on the ground that the bail once granted to the accused can only be cancelled by a higher court and not by the same court unless there is a violation of any condition of the bail order. The present applicants never misused the liberty granted to them. The injured died after six

months of the incident and it is also not clear whether she succumbed to the injuries caused to her during the incident or she died an accidental death.

5. Learned counsel for the applicants places reliance on judgment of Hon'ble Apex Court in case of **Aslam Babalal Desai vs. State of Maharashtra; AIR 1993 SC** and it was held that cancellation of the bail on the ground of subsequent filing of charge-sheet is not permissible.

6. I have heard both the counsels and taken their rival contention into consideration. In considered opinion of this Court, the impugned order suffers from various infirmities. Firstly in the very beginning the court dismissed an application for exempting personal appearance of the accused persons, who were not present before the court. When their application was dismissed the counsel was not authorized to appear on their behalf, and therefore, the disposal of application dated 30.04.2016 was not possible. However, the learned Additional Sessions Judge ignored this aspect of the matter and proceeded to dispose of the application. Further, he forfeited the bail and bond, which was not possible unless there was a breach of any condition on which the bail was granted merely because Section 302 IPC was added, the bail and bond could not be forfeited. This apart, the bail was granted by the Higher Court that is the High Court, and therefore, unless there was a breach of

condition of the order, the trial Court was not competent to cancel the bail order. And therefore, without giving any opportunity of hearing to the accused persons and without giving them any notice, their bail and bond were forfeited and non-bailable warrants were issued against them. One accused Rahul was taken into custody, however, he is not present before this Court in this revision, and therefore, no order can be passed for him. However, so far as the present applicants are concerned, non-bailable warrants were issued against them. Accordingly, the impugned order suffers from illegality and infirmity, and therefore, cannot be allowed to sustain.

7. Accordingly, this revision is allowed. The impugned order is set aside. The bail and bond produced by the applicants earlier are restored. They are directed to appear before the Court on next date of hearing and the trial Court is directed to give them 30 days time to file an application for grant of bail under appropriate provision of law for their release on bail under Section 302 IPC. If their bail application is dismissed by the trial Court and the High Court then they may be taken into custody otherwise they cannot be taken into custody till their application for grant of bail under Section 302 IPC is disposed of.

8. With observations and directions as above, the matter stands disposed of.

(ALOK VERMA)
JUDGE