

HIGH COURT OF MADHYA PRADESH, JABALPUR**BENCH AT INDORE****S.B.: Hon'ble Shri Justice Subodh Abhyankar****Miscellaneous Criminal Case No.21558/2021**

(Nandkishore s/o Ganesh Ram Meghwal

Versus

The State of Madhya Pradesh)

(Case was heard on 30th June, 2021)

- Counsel for the Parties** : Mr. Vikas Rathi, learned counsel for the applicant.
Mr. Anendra Singh Parihar, learned Panel Lawyer for the respondent / State of Madhya Pradesh.
- Whether approved for reporting** : Yes
- Law laid down** : In case of issuance of summons / warrants against government employee / officer, the prosecution fails to procure their presence in Court, their salary / pension, as the case may be, can be withheld, if it is found that the government official is avoiding the summons / warrants.
- Significant paragraph numbers** : From 06 to 09

ORDER

Post for

07.07.2021

**(Subodh Abhyankar)
Judge**

High Court of Madhya Pradesh, Jabalpur
Bench at Indore

Miscellaneous Criminal Case No.21558/2021

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Mr. Vikas Rathi, learned counsel for the applicant.

Mr. Anendra Singh Parihar, learned Panel Lawyer for the respondent /
State of Madhya Pradesh.

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ORDER

(Passed on this 7th day of July, 2021)

This is the applicant's repeat (**seventh**) bail application under Section 439 of Criminal Procedure Code, 1973. He is implicated in connection with Crime No.230/2014 registered at Police Station Birlagram, District Ujjain (MP) for offence punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code, 1860. His earlier bail applications have already been dismissed by this Court on merits. The applicant is in jail since 25.10.2018.

2. The allegation against the applicant is that he committed murder of Satish s/o Ramkirshna.

3. Counsel for the applicant has submitted in fifth bail application of the applicant being Miscellaneous Criminal Case No.46754/2019, this Court vide order dated 20.11.2019 while dismissing the repeat bail application as withdrawn, directed the learned Judge of the trial Court to expedite the trial and conclude the

same as early as possible. Counsel has further submitted that the applicant is in jail since 29.08.2014 and till date, the trial has not concluded, despite the specific order passed by this Court. Thus, taking into account the period of incarceration, which is around seven years' incarceration, the application be allowed.

4. Counsel has also cited various judgments of this Court in the case of **Phool Singh v. State of Madhya Pradesh** in **Miscellaneous Criminal Case No.36488/2020**, order dated **01.10.2020** (Gwalior Bench); **Rambahor Saket & others v. State of Madhya Pradesh** in **Miscellaneous Criminal Cases No.32718, 25031 and 17896 of 2018**, order dated **04.12.2018** (Main Seat at Jabalpur); **Monu @ Katle @ Ifran v. State of Madhya Pradesh** in **Miscellaneous Criminal Case No.5459/2021** vide order dated **02.02.2021** (Gwalior Bench) and in the case of **Surendra Patel v. State of Madhya Pradesh** in **Miscellaneous Criminal Case No.3556/2019** and **Miscellaneous Criminal Case No.37749/2018** on **20.10.2020** (Main Seat at Jabalpur) as well as the judgments of the Supreme Court in the case of **Hussainara Khatoon & others v. Home Secretary, State of Bihar** reported as **(1980) 1 SCC 81**, **Vivek Kumar v. State of Uttar Pradesh** reported as **(2000) 9 SCC 443** to substantiate his point, that the applicant cannot be allowed to languish in jail, when the prosecution is not able to lead its entire evidence within a reasonable period of time.

5. Counsel for the respondent / State, on the other hand, has opposed the prayer and it is submitted that no case for grant of bail is made out, as his earlier bail applications have already been dismissed on merits.

6. This Court has also called for the report regarding the status of the case from the trial Court; and as per the status report, nine witnesses have already been examined and only two prosecution witnesses are remained to be still examined and they are Dr. Shiv Kumar Saimil (the doctor who performed the postmortem) and the Investigating Officer of the case Sub Inspector Narendra Yadav. It is also mentioned in the status report that the presence of these two witnesses could not be procured despite issuance of warrants against them.

7. On due consideration of the facts and circumstances of the case and considering the gravity of the offence, although this Court does not find it to be a fit case to grant bail to the applicant at this juncture, however, looking to the fact that the applicant is in jail since 29.08.2014, learned Judge of the trial Court is directed to conclude the trial preferably within a further period of six months and if the trial is not concluded within the stipulated period, the applicant can renew his prayer for grant of bail. So far as the judgments cited by the counsel for the applicant are concerned, the same are not relevant at this stage.

8. Taking note of the conduct of the official prosecution witnesses, this court finds it rather surprising that the prosecution has not been able to procure the presence of two official witnesses, who are on government payroll, even after issuing arrest warrants against them. In such circumstances, it is directed to the Principal Secretary, General Administration Department, State of Madhya Pradesh, Bhopal and the Secretary, Department of Home (Police), Bhopal to withhold the salary of these employees, viz., Dr. Shiv Kumar Saimil (the doctor who performed the postmortem) and the Investigating Officer of the case Sub Inspector Narendra Yadav if they are still employed with the government; and if they are already retired, their pension be withheld with immediate effect until they appear before the concerned Court for recording of their statement in the matter.

9. Let a copy of this order be sent to the Principal Secretary, General Administration Department, State of Madhya Pradesh, Bhopal and the Secretary, Department of Home (Police), Bhopal who are also directed to furnish its compliance report to the Registry of this Court within a period of ten days from the date of receipt of certified copy of this order.

10. With the aforesaid observation and direction, Miscellaneous Criminal Case No.21558/2021 stands disposed of.

(Subodh Abhyankar)
Judge