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CRR-3798-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL

ON THE 14th OF OCTOBER, 2024CRIMINAL REVISION No. 3798 of 2024*PRADUMN VERMA**Versus**DEEPAK RATHORE*

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Appearance:

Shri Ramanuj Choubey, counsel for the applicant.
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ORDER

This revision under Section 397 read with Section 401 of Cr.P.C. has been filed assailing the appeal judgment dated 03.06.2024, passed in CRA No.21/2024 (Deepak Rathore Vs. Pradumn Verma) by Ist ASJ, District Sehore, whereby, judgment of conviction and order of sentence dated 13.06.2023 passed by CJM, Sehore in SC NIA No.327/2021 convicting the applicant for commission of offence under Section 138 of the Negotiable Instruments Act and sentencing him to undergo one year RI and payment of Rs.7,00,000/- as compensation and 9% interest thereupon with default stipulations, has been affirmed.

2. Heard on I.A.No.18623/2024, an application seeking exemption to surrender.

3. On perusal of the memo of revision, it is apparent that despite this court's direction since 02.08.2024 onwards till this day, applicant/accused has not surrendered and is absconding and despite his conviction from two Courts, he has not surrendered to serve the sentence imposed on



him. Rule 48 of Chapter-X M.P. High Court Rules, 2008 reads as under:-

“48. A memorandum of appeal or revision petition against conviction, except in cases where the sentence has been suspended by the Court below, shall contain a declaration to the effect that the convicted person is in custody or has surrendered after the conviction. Where the sentence has been so suspended, the factum of such suspension and its period shall be stated in the memorandum of appeal or revision petition, as also in the application under section 389 of the Code of Criminal Procedure, 1973. An application under section 389 of the Code of Criminal Procedure, 1973 shall, as far as possible, be in Format No. 11 and shall be accompanied by an affidavit of the appellant/applicant or some other person acquainted with the facts of the case.”

4. The Hon'ble Apex Court by order dated 30.07.2024, passed in {[Special Leave (Criminal) Diary No.(s).20900 of 2024]} (Arising out of impugned final judgment and order dated 25.01.2024, in CRLR No.4402/2022 in the case of *Daulat Singh Vs. State of Madhya Pradesh*) has held that a revision is not maintainable where accused has not surrendered despite his conviction to serve the sentence imposed on him and exemption cannot be allowed by High Court.

5. Hon'ble Apex Court considered the judgement of *Vivek Rai and Others Vs. High Court of Jharkhand, reported in (2015) 12 SCC 86* and upheld the order of this court and held as under:-

"15. We do not, therefore, consider it appropriate to accept as a sound proposition of law that a high court, in exercise of its inherent power, may grant exemption from surrendering in a particular case despite concurrent findings of conviction oblivious of the duty of giving effect to orders passed under the



Code and/or to prevent abuse of the process of a court."

6. As applicant has not surrendered, I.A.No.18623/24 an application seeking exemption from surrender, is **dismissed**. Therefore, this revision being filed in violation of Rule 48 of Chapter X of M.P. High Court Rules is **dismissed** as not maintainable. Consequently, I.A.No.18621/24 an application under section 397 of Cr.P.C for suspension of sentence and grant of bail also stands **dismissed**.

7. A copy of this order be sent down to the trial Court concerned through Sessions Judge, Sehore (M.P.). Trial Court is directed to take all necessary steps to commit the accused to jail to serve out the sentence.

(DINESH KUMAR PALIWAL)
JUDGE

MKL