

2023 LiveLaw (SC) 289

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
DR. DHANANJAYA Y. CHANDRACHUD; CJI., J.B. PARDIWALA; J.**

April 06, 2023

Criminal Appeal No 1010 of 2023 (Arising out of Special Leave Petition (Crl) No 2269 of 2023)

Totaram versus State of Madhya Pradesh & Anr.

Bail - The order of the High Court directing that the appellant be arrested immediately and seeking an explanation from the Second Additional Sessions Judge was wholly disproportionate and was not warranted. Such orders of the High Court produce a chilling effect on the District judiciary. The members of the district judiciary cannot be placed in a sense of fear if they were to exercise the jurisdiction lawfully entrusted to them for granting bail in appropriate cases.

(Arising out of impugned final judgment and order dated 02-12-2022 in MCRC No. 42612/2022 passed by the High Court of M.P. Principal Seat at Jabalpur)

For Petitioner(s) Mrs. Rekha Pandey, AOR Mr. Raghav Pandey, Adv. Mrs. Gauri Pandey, Adv. Mr. Suyash Mohan Guru, Adv. Mr. Nitin Agarwal, Adv.

For Respondent(s) Ms. Anuradha Mutatkar, AOR Mr. Tarun Kumar Thakur, Adv. Mr. Bharat Singh, A.A.G. Mr. Sunny Choudhary, AOR Mr. Harmeet Singh Ruprah, Adv.

ORDER

1 Leave granted.

2 By the impugned order dated 2 December 2022, a Single Judge of the High Court of Madhya Pradesh cancelled the bail which was granted to the appellant. The High Court observed that the Trial Court had granted bail to the appellant without taking into account an earlier order of the High Court dated 21 July 2022 rejecting bail. The High Court observed that the mere fact that the charge-sheet had been filed could not be considered as a change in circumstances. The police was directed to arrest the appellant immediately. The High Court has also directed the Registrar General to issue a notice to show cause to the Second Additional Sessions Judge, Harda to seek his explanation on the circumstances in which he had granted bail to the appellant.

3 The appellant and the complainant are closely related.

4 On 19 June 2022, FIR No 354 was registered against the appellant at Police Station Harda, District Harda. The FIR implicates alleged offences under Sections 294, 323, 342, 354 and 506 read with Section 34 of the Indian Penal Code 1860.

5 The allegation in the FIR is that on 19 June 2022 when the complainant was going to tend his cows and oxen, the appellant and other co-accused accosted him, tied him to a tree after stripped him and assaulted him.

6 The first application for bail was rejected by the Trial court. On 21 July 2022, the High Court declined to grant bail to the appellant. The application was dismissed as withdrawn while granting liberty to the appellant to file a fresh application for bail after the passage of reasonable time. After investigation, the charge-sheet was submitted before the competent court on 5 August 2022. The Trial court was moved for the grant of bail on 10 August 2022. On 16 August 2022, the Trial Judge, noting that a second regular bail application had been submitted by the appellant, granted bail on the ground that the charge-sheet had been submitted and the other accused

have been granted bail. This order of the Trial court was questioned before the High Court and resulted in the impugned order.

7 While entertaining the Special Leave Petition, this Court, by its order dated 24 February 2023, issued notice and passed the following order :

“1 By the impugned order dated 2 December 2022, the Single Judge of the High Court of Madhya Pradesh has cancelled the bail which was granted by the trial court on 16 August 2022 to the petitioner. The charge-sheet in respect of alleged offences punishable under Sections 294, 323, 342, 354 and 506 read with Section 34 of the Indian Penal Code 1860 has been filed on 5 August 2022. Though the application for bail was rejected earlier on 21 July 2022, the trial court granted bail noting that:

- (i) The offence is not punishable with life imprisonment or death; and
- (ii) The other accused have been granted bail.

2 The High Court, while setting aside the order of the trial court, directed the issuance of a notice to the trial court seeking an explanation in regard to the order granting bail.

3 We are, *prima facie*, of the view that this is an eminently fit and proper case for the grant of bail even at this stage. Moreover, there was, *prima facie*, no justification for the High Court to call for an explanation from the trial judge for having granted bail. Such orders of the High Court seriously affect the independence of the district judiciary in considering applications for bail in appropriate cases.

4 We accordingly issue the following directions:

- (i) The petitioner shall be released on bail, subject to such terms and conditions as may be imposed by the trial court in connection with FIR No 354/2022, registered at Police Station Harda, District Harda, Madhya Pradesh;
- (ii) Liberty to serve the Standing Counsel for the State of Madhya Pradesh, in addition;
- (iii) Notice on the *de facto* complainant shall be effected through the SHO of the police station concerned; and
- (iv) The direction of the High Court calling for an explanation from the trial Judge shall remain stayed.

5 List the Special Leave Petition on 6 April 2023.

6 Counter affidavit shall be filed in the meantime.”

8 We have heard Ms Rekha Pandey, counsel appearing on behalf of the appellant, and Ms Anuradha Mutatker, counsel appearing on behalf of the second respondent.

9 The narration of facts in the earlier part of the order indicates that though the application for bail had been rejected both by the Trial court and the High Court on the earlier occasion, the High Court had granted liberty to the appellant to move a fresh application for bail after a reasonable period of time. After the charge-sheet was submitted before the competent Court under Section 173 of the Code of Criminal Procedure 1973, the appellant moved for bail afresh. The order passed by the Trial Judge granting bail on the ground that the charge-sheet had been submitted and that the other accused were on bail was eminently fair and reasonable. The order of the High Court directing that the appellant be arrested immediately and seeking an explanation from the Second Additional Sessions Judge was wholly disproportionate and was not warranted. Such orders of the High Court produce a chilling effect on the District judiciary. The members of the district judiciary cannot be placed in a sense of

fear if they were to exercise the jurisdiction lawfully entrusted to them for granting bail in appropriate cases. The order of the Trial Judge does not indicate that he had applied the wrong principles of law. Quite to the contrary, the exercise of the discretion to grant bail, having due regard to the nature of the offence, the fact that other accused had been granted bail and the charge-sheet had been submitted, was appropriate.

10 The appellant was in custody from 29 June 2022 till 16 August 2022, when he was granted bail by the Trial Court. As a result of the cancellation of bail by the High Court on 2 December 2022, he was taken into custody until he was released in pursuance of the order of this Court dated 24 February 2023 granting bail.

11 In the above circumstances, we set aside the impugned order of the High Court dated 2 December 2022. The application for cancellation of bail shall accordingly stand dismissed. The bail which has been granted to the appellant in pursuance of the order dated 24 February 2023 shall stand confirmed, subject to the terms and conditions which have been imposed by the Trial Court.

12 The appeal is disposed of in the above terms.

13 Pending application, if any, stands disposed of.

© All Rights Reserved @LiveLaw Media Pvt. Ltd.

*Disclaimer: Always check with the original copy of judgment from the Court website. Access it [here](#)