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THE HIGH COURT OF MADHYA PRADESH
MCRC-42352-2021
Jaipal Singh Vs. State of MP

Gwalior, Dated:14-09-2021

Shri R.S. Yadav, Counsel for the petitioner.

Shri I.S. Asthana, Public Prosecutor for the respondent/State.

Case Diary is available.

This tenth application under Section 439 of CrPC has been filed for grant of bail. Ninth bail application of the applicant was dismissed as withdrawn by order dated 07.06.2021 passed in M.Cr.C. No.23482/2021.

The applicant has been arrested on 05.01.2018 in connection with Crime No.7/2018 registered at Police Station Ron District Bhind for the offence under Section 8/20 of NDPS Act.

This repeat application has been filed for grant of bail on the ground of delay along with the complete order-sheets of the Trial Court.

It is submitted by the counsel for the applicant that this Court by order dated 25.06.2020 passed in M.Cr.C. No.10547/2020 had awarded the compensation to the applicant on account of non-appearance of the prosecution witnesses, but the situation has not improved and still the prosecution witnesses are not appearing.

Heard the learned counsel for the parties.

According to the prosecution case, 520 grams of opium was seized from the possession of the applicant, whereas 21 kg 570 grams

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of ganja was seized from the possession of the accused Ramnaresh and both of them were travelling in the same nano car. Earlier also the applicant had moved an application for grant of bail on the ground of delay in trial, however after condemning the hostile attitude of the prosecution by not producing the prosecution witnesses, this Court in M.Cr.C. No. 10547/2020 passed a detailed order dated 25.06.2020 and held that the prosecution has blatantly violated the fundamental right of the applicant of speedy trial and, accordingly, the prosecution was saddled with the liability of Rs.20,000/- to be paid by way of compensation to the applicant with liberty to recover the same from the salary of Inspector Rekha Pal and Inspector Ramnaresh Yadav.

It is not known as to whether the compensation amount of Rs.20,000/- has been paid to the applicant Jaipal Singh or not and whether the said compensation amount has been recovered from the salary of Inspector Rekha Pal and Inspector Ramnaresh Yadav or not and whether copy of the said order has been placed in the service book of Inspector Rekha Pal and Inspector Ramnaresh Yadav or not, therefore, the Superintendent of Police, Bhind is directed to immediately submit his compliance report to the Principal Registrar of this Court within a period of two weeks from today.

So far as the question of delay in trial is concerned, the

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applicant was awarded the compensation by order dated 25.06.2020 and from the order-sheets of the Trial Court, it appears that thereafter the case was taken up on 22.07.2020 but the prosecution witnesses were not present. Even the applicant was not produced. Thereafter, the case was adjourned to 17.08.2020. However, on 17.08.2020 the case was adjourned on account of limited Court functioning in the wake of second wave of Covid-19. On 03.09.2020, 18.09.2020, 06.10.2020, 19.11.2020 and 10.12.2020, the case was adjourned for the same reason. On 23.12.2020 the application of the applicant for his transfer to Bhind Jail was allowed. On 13.01.2021 warrant of arrest was issued against the prosecution witness No. 9. On 06.02.2021 the examination-in-chief and cross-examination of Ramnaresh (PW-6) was recorded. Thereafter, on 23.02.2021 the Rekha Pal (PW-7) was examined. On 15.03.2021 summons were served on Sub-Inspector Vinod Chhawai, but he did not appear and, accordingly,ailable warrants were issued. On 03.04.2021 summons issued against the other witnesses were received back as served, but they did not appear. Similarlyailable warrant of arrest issued against Vinod was not received back either served or unserved. On 04.08.2021ailable warrants issued against Sub-Inspector Vinod Chhawai were received back with an endorsement that he has been informed through RM as well as on mobile. However, when the AGP

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contacted Vinod then he informed that due to heavy rains in Guna and Shivpuri, the road connection has broken with Gwalior, therefore, he is unable to appear, accordingly, fresh bailable warrants of arrest was issued and the case was taken on 24.08.2021.

Since the applicant has not filed the copy of the order-sheet dated 24.08.2021, therefore, it is not known as to what transpired on the said date. From the order-sheets of the Trial Court, it is clear that although the summons were served on Sub-Inspector Vinod Chhawai, but he deliberately did not appear before the Trial Court on 15.03.2021 and on 03.04.2021, the bailable warrant of arrest was not returned back either served or unserved. Thus, it is clear that the prosecution has not taken a lesson from the order dated 25.06.2020 passed in M.Cr.C. No.10547/2020 and they are still working as per their own pleasure. The prosecution is not interested in early disposal of the trial and every prosecution witness who is a police personnel is taking trial for granted, and are not appearing before the Trial Court without assigning any reason and permission from the Court.

Accordingly, this Court is of the considered opinion that the State Government is continuously blatantly violating the fundamental right of the applicant of speedy trial. On earlier occasion, compensation of Rs.20,000/- was directed to be paid to the applicant for violation of his fundamental right. It is really unfortunate that the

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prosecution is not ready to understand that no one can be kept behind the bars at the whims and wishes of the prosecution witnesses. If the prosecution is not in a position to keep its witnesses present, then they must think it seriously as to whether they should go for prosecution of the accused or not. Filing of the charge-sheet is not the end of the duty of the prosecution. It is their duty to ensure that the witnesses appear before the Trial Court regularly without any default so that fate of a person can be decided on the basis of evidences.

Under these circumstances, where the prosecution has not learnt a lesson and is again blatantly violating the fundamental right of the applicant, accordingly, the State is directed to pay **Rs.50,000/- (Rupees Fifty Thousand)** to the applicant for utter violation of the fundamental right. The PHQ has issued various circulars directing that daily review regarding service of Summons/Bailable Warrants/Warrants shall be done by a gazetted officer. But it appears that all those circulars have been thrown in the dustbin and since the Superintendent of Police, Bhind has miserably failed in ensuring the appearance of his own police witnesses before the Trial Court, therefore, it is directed that the said compensation amount of Rs.50,000/- shall be recovered from the salary of Superintendent of Police, Bhind. The State Government is also directed to initiate a Departmental Enquiry against Vinod Chhawai, Sub-inspector, who

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did not appear before the Trial Court on 15.03.2021 in spite of service of summons. The State Government is also directed to start Departmental Enquiry against the constable who did not serve the bailable warrants on Vinod Chhawai and did not returned the same either served or unserved on 03.04.2021.

Let the compensation amount be paid within a period of 15 days from today and the Departmental Enquiry against Vinod and other guilty police personnel be initiated within the said period.

The Inspector General of Police, Chambal Range, Gwalior is directed to submit his compliance report before the Principal Registrar of this Court on or before **04.10.2021**. The Inspector General of Police is also directed to file an affidavit before the Principal Registrar of this Court to the effect as to whether the amount of Rs.50,000/- has been recovered from the salary of Superintendent of Police, Bhind or not as well as he is also directed to place the copy of the charge-sheet, which shall be issued to Vinod Chhawai and other guilty persons who did not appear before the Trial Court or who did not serve the summons/bailable warrants on the police witnesses.

Apart from the payment of compensation amount of Rs.50,000/- to the applicant, it is directed that the Trial shall be positively concluded within a period of three months from the date of

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receipt of certified copy/soft copy of this order.

The Trial Court shall fix the case on day to day basis and it shall be the personal duty and responsibility of Superintendent of Police, Bhind to ensure that all the prosecution witnesses appear before the Trial Court on the date which will be fixed by the Trial Court. In case, if any witness is unable to appear before the Trial Court, then the application shall be filed with an affidavit of the Superintendent of Police, Bhind pointing out the reasons for exemption from appearance of the witness on the said date.

Office is directed to immediately send a copy of this order to the Trial Court as well as to the Inspector General of Police, Chambal Range, Gwalior as well as the Superintendent of Police, Bhind for necessary information and compliance.

A typed copy of this order be also provided to the Public Prosecutor so that he can communicate the same to the Inspector General of Police, Chambal Range, Gwalior as well as the Superintendent of Police, Bhind without any further delay.

With aforesaid observations, the application is finally **disposed of.**

(G.S. Ahluwalia)
Judge

Abhi