

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 4th OF NOVEMBER, 2022

MSCCELLANEOUS CRIMINAL CASE NO.51550 OF 2022

Between:-

DEEPU KAURAV,

.....APPLICANT

(BY SHRI R.S. BANSAL- ADVOCATE)

AND

**STATE OF MADHYA PRADESH
THROUGH POLICE STATION
HAJIRA, DISTRICT GWALIOR
MADHYA PRADESH.**

.....RESPONDENT

(BY SHRI C.P. SINGH – PANEL LAWYER)

This application coming on for hearing this day, the Court passed the following:

ORDER

In compliance of order dated 2/11/2022 the SSP, Gwalior has filed his reply and has submitted that as per the provisions of Section 71 of Cr.P.C., SHO, Manish Dhakad and Constable 1664 Kamlesh Chaurasiya should have executed the warrant of arrest and there is no procedure for serving the same by sending it to the concerning person on WhatsApp. Accordingly, a notice has been issued to the above two persons calling upon them to show-cause as to why the departmental action may not be initiated against them.

The SHO, Police Station Hazira, District Gwalior has not filed his response as directed by this Court by order dated 2/11/2022. However, it is submitted by the counsel for the State that since the SHO, Police Station Hazira, District Gwalior has gone to Bhopal in order to attend the training session, therefore, some time may be granted to file his reply. By seeking instructions on telephone, it is submitted by Shri Singh, Panel Lawyer for the State, that the SHO, Police Station Hazira, District Gwalior has not filed any written response before the Trial Court and had made verbal submissions.

Considered the reply submitted by SSP, Gwalior as well as the verbal submissions made by the counsel for the State.

It is really shocking that in spite of a clear direction by the Trial Court by order dated 9/9/2022, by which the SHO, Police Station Hazira, District Gwalior was called upon to submit his response as to why an action may not be taken against him under Section 29 of the Police

Regulations, still the SHO, Police Station Hazira, District Gwalior did not file any response. So far as the submission that the SHO, Police Station Hazira, District Gwalior had made verbal submissions before the Trial Court is concerned, the same is clearly false because the subsequent order-sheets of the Trial Court do not reflect so. Thus, it is clear that the SHO, Police Station Hazira, District Gwalior was not only negligent in discharging his duties, but also did not respond to the order dated 9/9/2022 of the Trial Court.

Under these circumstances, the SHO, Police Station Hazira, District Gwalior is directed to positively file his written response before the Trial Court latest by 18th November, 2022. The Trial Court is directed to pass a specific order in the light of the order dated 9/9/2022 passed by it as well as in the light of the reply submitted by the SSP, Gwalior before this Court. A copy of the reply submitted by the SSP, Gwalior be also sent to the Trial Court for necessary information and compliance.

It is submitted by the counsel for the State that today Dr. H.L. Manjhi has been arrested and he has been produced before the Court and no order has been passed so far with regard to further cause of action by the Trial Court and the case is fixed for recording of evidence on 29/11/2022.

Considered the submissions made by the counsel for the State.

In the light of the fact that Dr. H.L. Manjhi has been arrested and has been produced before the Court, no further directions are required in the matter. However, the Disciplinary Authority of Dr. H.L. Manjhi is directed to look into the matter and to take necessary action against Dr. H.L. Manjhi for not responding to the summons / bailable warrants /

warrants issued by the Trial Court, because this act on the part of Dr. H.L. Manjhi is in clear violation of Article 21 of the Constitution of India where the trial is getting delayed because of his non-appearance before the Trial Court and the accused is in jail.

The SSP, Gwalior has also stated in his reply that a show-cause notice has been issued to the SHO, Police Station Hazira, District Gwalior as well as to Constable Kamlesh Chaurasiya. From the said show-cause notice, it is clear that three days time was granted to both the police personnel to submit their response. Accordingly, Shri Amit Sanghi, SSP, Gwalior is directed to immediately submit his report before the Principal Registrar of this Court latest by 16th November, 2022 with regard to the action / decision taken by him on the show-cause notice.

It is submitted by the counsel for the applicant that his bail application may not be kept pending and may be decided as Dr. H.L. Manjhi has already been arrested as stated by the police.

This fifth application under Section 439 of Cr.P.C. has been filed for grant of bail. Fourth application was dismissed by order dated 24/2/2022 passed in M.Cr.C. No.9643/2022.

The applicant has been arrested on 4/7/2019 in connection with Crime No.225/2019 registered at Police Station Hazira, District Gwalior for offence under Sections 302, 34 of IPC.

The previous bail applications of the applicant have already been dismissed on merits. The present bail application has been filed only on the ground of delay. Since Dr. H.L. Manjhi has been arrested and has been produced before the Court, therefore, it is clear that now there is no apprehension of further delay in the trial. Accordingly, no case is made

out for taking a contrary view in the matter.

The application fails and is hereby **dismissed** with aforesaid directions.

Let a copy of this order be supplied to the Public Prosecutor for communicating the same to the SSP, Gwalior for necessary information and compliance.

(G.S. AHLUWALIA)
JUDGE

Arun*