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THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.18225/2022
Brijmohan Sharma Vs. State of M.P.

Gwalior, Dated:19/04/2022

Shri Ramdas Gautam, Advocate for applicant.

Shri Rajeev Upadhyay, Public Prosecutor for respondent/State.

Case diary is available.

This eighth application under Section 439 of Cr.P.C. has been filed for grant of bail. Seventh application was dismissed as withdrawn by order dated 24/2/2022 passed in M.Cr.C. No.8069/2022.

The applicant has been arrested on 29/5/2018 in connection with Crime No.49/2018 registered at Police Station Barason, District Bhind for offence under Sections 307, 302, 147, 148, 149, 323 of IPC.

This application has been filed mainly on the ground of delay. The applicant has filed the copy of the order-sheets to show that he is not responsible for the delay. From the order-sheets, it appears that the charges were framed on 2/11/2018 and thereafter on 10/12/2018 an application under Section 91 of Cr.P.C. was filed by the co-accused Sobharam, which was dismissed by order dated 11/12/2018. Thereafter, on certain occasions summons issued against the witnesses were not received back either served or unserved. On 15/4/2019 the prosecution witness Devesh Sharma was present, but he was not examined. On the very same day, an application was filed by the counsel for the accused persons for deferring cross-examination of the witnesses unless and until all the witnesses on the

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similar issue are not examined. On 15/5/2019 an application under Section 91 of Cr.P.C. was filed by the accused persons, which was allowed by order dated 4/7/2019 and thereafter, by order dated 6/8/2019 the application for deferring cross-examination of the witnesses was dismissed. On 4/9/2019 bailable warrant was issued against the witnesses Devesh Sharma and Meerabai. It is not out of place to mention here that Devesh Sharma, who was earlier present on 15/4/2019, was not examined. On 24/9/2019 the prosecution witness Devesh Sharma was present, but he was not examined because the articles were not produced from the Malkhana. Thereafter, on 20/12/2019 the examination-in-chief of Devesh Sharma was recorded, but the counsel for the accused refused to cross-examine him on the ground that he is busy in other case. On 8/1/2020 the cross-examination of the prosecution witness Devesh Sharma started, but the counsel for the accused refused to complete the cross-examination only on the ground that the Court working hours are over and accordingly, the case was taken up on 9/1/2020 and cross-examination was over. Thereafter, the case was fixed for 7/2/2020, 5/3/2020 and arrest warrants were issued against the witnesses and the case was fixed for 8/4/2020. It appears that because of nationwide lock-down the proceedings before the Trial Court came to a halt. Accordingly, by order dated 22/10/2020 the case was fixed for examination of witness on 10/12/2020. On 10/12/2020 summons were issued against one prosecution witness and the case was

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adjourned to 15/1/2020 and on the said date the prosecution witness Meerabai did not appear in spite of service of summons and accordingly, bailable warrant of arrest was issued. On 15/1/2021 also the prosecution witness Meerabai did not appear and accordingly, arrest warrant was issued. On 11/8/2021 Sanjay Sharma (PW-2) was examined and bailable warrant of arrest was issued against him and prosecution witness Meerabai. On 16/9/2021 the prosecution witnesses Girish Kumar, Anil Singh, Meerabai and Ramashankar Sharma were present, but they were not examined on the ground that condolence has taken place. Thereafter, on 22/11/2021 the evidence of Ramashankar Sharma was recorded, but Girish Kumar, Anil Singh and Meerabai did not appear. On 3/2/2022 the prosecution witness Subedar Khan was present in the Court from 11 AM, but the Special Public Prosecutor did not appear in spite of repeated calls and accordingly, the case was passed over at 1:05 PM and the case was once again taken up at 2:35 PM. The prosecution witness Subedar Khan was present, but the counsel for the accused persons stated that at present he is not well and he has to go out of station and, therefore, he cannot cross-examine the witness and accordingly, the examination of Subedar Khan was deferred and even his examination-in-chief was not recorded. On 3/3/2022 prosecution witnesses Subedar Khan and Anil Sharma were present. The examination-in-chief of Anil Sharma was recorded, however, the counsel for the accused submitted that since the arguing counsel is

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busy in another Court, therefore, the cross-examination may be deferred for some time. The Special Public Prosecutor was directed to get the examination-in-chief of the another witness Subedar Khan recorded, but she refused to get his examination-in-chief recorded on the ground that unless and until the prosecution witness Anil Sharma is cross-examined by the counsel for the accused, she would not get the examination-in-chief of the prosecution witness Subedar Khan recorded. The case was taken up at 4:50 PM. The prosecution witness Anil Sharma was present, but the counsel for the accused submitted that since the Court working hours would be over, therefore, he is unable to cross-examine the witness. Again the Special Public Prosecutor expressed that since the cross-examination of Anil Sharma is yet to take place, therefore, she is unable to record the examination-in-chief of the prosecution witness Subedar Khan. Accordingly, the Trial Court released the prosecution witness Subedar Khan with a direction that he shall appear after the service of summons.

From the order-sheets, it is clear that the defence counsel are also adopting delaying tactics and unfortunately it appears that the Special Public Prosecutor has also joined hands with the defence counsel. On 3/3/2022 when two witnesses, namely, Anil Sharma and Subedar Khan were present and the cross-examination of Anil Sharma was being deferred only at the request of the counsel for the defence, then what was the hitch before the Special Public Prosecutor

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in not getting the examination-in-chief of the another witness Subedar Khan recorded, is beyond the understanding of this Court. From order dated 3/3/2022, it is clear that at least on two occasions the Trial Court had requested the Special Public Prosecutor to get the examination-in-chief of Subedar Khan recorded, but she refused to do so. This conduct of the Special Public Prosecutor cannot be appreciated. Accordingly, the Principal Secretary, Law and Legislative Department, State of M.P., Bhopal and the District Magistrate Bhind are directed to look into the conduct of Smt. Hemlata Arya, Special Public Prosecutor, in not cooperating with the Trial Court for recording of examination-in-chief of the prosecution witness Subedar Khan. The authorities are directed to review as to whether the continuation of Smt. Hemlata Arya as Special Public Prosecutor will be in the interest of justice or not? However, it is directed that the present case be immediately withdrawn from the Special Public Prosecutor.

Let the action be taken in this regard after giving full opportunity of hearing to the Special Public Prosecutor and a report be filed before the Principal Registrar of this Court within a period of one month from today, i.e. latest by 18th May, 2022.

From the order-sheets, it is clear that the counsel for the applicant is also adopting all sorts of delaying tactics to avoid cross-examination of the witnesses. Under these circumstances, no case is made out for grant of bail. Accordingly, the application fails and is

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hereby **dismissed**.

Let two copies of this order be given to the counsel for the State for communicating the same to the Principal Secretary, Law and Legislative Department, State of M.P., Bhopal as well as to the District Magistrate, Bhind.

(G.S. Ahluwalia)
Judge

Arun*