

1 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No. 10547 /2020
Jaipal Singh vs. State of MP

Gwalior, Dated :25/06/2020

Shri Brajesh Tyagi, Counsel for the applicant.

Shri M.P.S. Raghuvanshi Additional Advocate General, with
Shri Rajesh Shukla, Dy. Advocate General for the State.

Shri M.P.S. Raghuvanshi, Additional Advocate General was informed in advance, that in compliance of order dated 17-6-2020, the Superintendent of Police, Bhind may appear before the Court, through Video Conference and a link shall be sent to him, however, Shri Manoj Kumar Singh, Superintendent of Police, Bhind is present in person in the chamber of Additional Advocate General.

Heard finally through Video Conferencing.

This 8th application for grant of bail has been filed under Section 439 of Cr.P.C. on the ground of delay.

The applicant is in jail from 5-1-2018 in connection with crime no.7/2018 registered at police station Raun, Distt. Bhind for offence under Sections 8/20 of NDPS Act. The last application was rejected by order dated 5-11-2019 passed in M.Cr.C. No. 44087/2019 because of the fact that the applicant had not filed the copy of the ordersheets to point out that the applicant is not responsible for the delay in trial.

However, now all the relevant order sheets have been filed along with the bail application.

It is submitted by the Counsel for the applicant, that the last

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witness was examined on 26-3-2020, and thereafter, the police witnesses did not appear inspite of the service of notices as well asailable warrants. It is further submitted that on various occasions, even the summons orailable warrants issued against Inspector Rekhapal and Inspector Ram Naresh Yadav were not returned back either served or unserved. Once, these officers were discharging their duties, then non-service of summons/ailable warrants on them is a serious lapse on the part of the prosecution, which clearly shows that the police witnesses are deliberately avoiding to appear before the Trial Court as a result of which the applicant is languishing in jail without any progress in trial, therefore, the applicant be granted bail.

This Court by order dated 16-3-2020, had directed the Superintendent of Bhind, to submit his explanation as to why the police witnesses are not appearing inspite of the service of summons/ailable warrants. Accordingly, the Superintendent of Police submitted his explanation dated 20-3-2020 and mentioned that by order dated 18-3-2020 he has directed the Inspector Rekhapal and Inspector Ramnaresh Yadav to appear before the Trial Court and has also directed the S.D.O.(P) to conduct a preliminary enquiry. It was also mentioned that as per the direction of the Superintendent of Police, Bhind, the Inspector Rekhapal and Ram naresh Yadav did appear before the Trial Court on 20-3-2020 but their evidence could

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not be recorded and the case was adjourned to 3-4-2020 and in the wake of Covid 19 Pandemic, the normal functioning of the Courts has been suspended therefore, their evidence could not be recorded on 3-4-2020.

This explanation submitted by the Superintendent of Police, Bhind was not found to be satisfactory and this Court was of the view that the reply submitted by Superintendent of Police, Bhind, is merely an eye wash, therefore, this Court by order dated 17-6-2020, had directed the Superintendent of Police, Bhind to remain present before the Court.

A detailed reply has been filed today by the Superintendent of Police, Bhind.

In the reply filed today, it is submitted by Shri Manoj Kumar Singh, S.P., that he has recently joined as S.P., Bhind on 2-6-2020 and was busy in maintaining law and order situation in the wake of Covid 19 pandemic. A letter dated 18-6-2020 was received from the office of Additional Advocate General, only then he came to know about the present case. It is submitted that the S.D.O.(P), Lahar Distt. Bhind had submitted a preliminary enquiry report on 21-3-2020 in which it was found that the Inspector Rekhpal and Inspector Ram Naresh Yadav, did not appear before the Trial Court inspite of service of summons/bailable warrants. However, it was further

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mentioned that explanation of these officers has been called and further action shall be taken accordingly.

It appears that thereafter, the Superintendent of Police, Bhind, did not pursue this matter any further and no further action was taken.

It appears that only after receiving the letter dated 18-6-2020, from the office of Additional Advocate General, the things started moving and on 20-6-2020, the final preliminary enquiry report was submitted by the S.D.O.(P) Lahar, Distt. Bhind by giving a specific finding that the explanation given by the two police witnesses were not found to be satisfactory/correct and their conduct of not appearing before the Court is indicative of fact that they are guilty of negligence.

Accordingly, it appears that the Superintendent of Police by letter dated 22-6-2020 made a recommendation to the I.G., Chambal Zone, Morena to impose a punishment of fine of Rs. 5000/- on each of the police officer and accordingly, the I.G., Chambal Zone, has imposed a punishment of Rs. 5000/- on both the police officers, i.e., Inspector Rekhpal and Inspector Ram Naresh Yadav.

The only question for consideration is that whether the action of the Superintendent of Police, Bhind in this matter is a genuine one or it is once again an attempt to complete the formalities.

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The order sheets of the Trial Court have been placed on record along with the application for grant of bail. From the order sheets, the following situation would emerge :

- 26-3-2019 : P.W. 5 was examined and summons were issued to P.W. 7 to 10
- 5-4-2019 : The summons issued to P.W. 9 and 10 were not received back either served or unserved. Accordingly fresh summons were issued.
- 16-4-2019 : The summons issued to P.W. 9 and 10 were not received back either served or unserved. Accordingly fresh summons were issued.
- 30-4-2019 : The summons issued to P.W. 9 and 10 were not received back either served or unserved. Accordingly fresh summons were issued.
- 11-5-2019 : The summons issued to P.W. 9 and 10 were not received back either served or unserved. Accordingly fresh summons were issued. Explanation was called but it appears that explanation was never submitted.
- 27-5-2019 : The summons issued to P.W. 9 and 10 were not received back either served or unserved. Accordingly fresh summons were issued.
- 11-6-2019 : Summons served but P.W. 9 and 10 did not appear.
- 26-6-2019 : Bailable warrant issued against P.W.9 was not received back either served or unserved. B/W issued against P.W. 10 was received back served but he did not appear
- 10-7-2019 : Bailable warrant issued against P.W. 9 and warrant of arrest issued against P.W.10 not received back either served or unserved.
- 23-7-2019 : Bailable warrant issued against P.W. 9 and warrant of arrest issued against P.W.10 not received back either served or unserved.
- 2-8-2019 : Bailable warrant issued against P.W. 9 and warrant of arrest issued against P.W.10 were received back unserved.
- 21-8-2019 : Bailable warrant issued against P.W. 9 and warrant of arrest issued against P.W.10 were served but they did not appear. Warrant of arrest issued.
- 9-9-2019 : Warrant of arrest issued against P.W. 9 and P.W.10 received back unserved.
- 26-9-2019 : Warrant of arrest issued against P.W. 9 and P.W.10 were served by giving information on mobile. But

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both of them did not appear therefore, fresh warrant of arrest issued.

- 16-10-2019 : Warrant of arrest issued against P.W. 9 and P.W.10 received back unserved.
- 7-11-2019 : Warrant of arrest issued against P.W. 9 and P.W.10 received back unserved.
- 21-11-2019 : Warrant of arrest issued against P.W. 9 and P.W.10 received back unserved.
- 5-12-2019 : Warrant of arrest issued against P.W. 9 and P.W.10 not received back either served or unserved.
- 18-12-2019 : Warrant of arrest issued against P.W. 9 and P.W.10 received back unserved.
- 9-1-2020 : No mention about status of warrant of arrest but the presence of witnesses not mentioned
- 27-1-2020 : No mention about status of warrant of arrest but the presence of witnesses not mentioned.
- 14-2-2020 : Warrant of arrest issued against P.W.9 and P.W. 10.

From the reply of the Superintendent of Police, Bhind, it appears that the S.P., Bhind by its letter dated 20-3-2020 directed the P.W. 9 and 10 to appear before the Trial Court, and from the order sheet dated 20-3-2020, which has been filed along with the compliance report of the S.P., Bhind, it appears that both the witnesses appeared before the Trial Court, only after the case was already adjourned.

Thus, from the ordersheets of the Trial Court, it is clear that either the police constable, who was assigned the duty of serving summons or bailable warrants or warrants of arrest was unable to locate the senior police officers of the rank of Inspector, or he was deliberately returning the summons/bailable warrants/warrants of arrest without serving the same. Further, the Inspector Rekhpal and

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Ram Naresh Yadav, did not appear before the Trial Court inspite of the service of summons,ailable warrants of arrest or even warrant of arrest which was informed to them by the police constable on mobile phone. Thus, this conduct of the two prosecution witnesses i.e., Inspector Rekhpal and Inspector Ram Naresh Yadav is clearly indicative of the fact that they are not concerned about the life and liberty of an undertrial. It is also important to mention here, that on none of the occasion, any of these two witnesses, ever filed an application before the Trial Court seeking their exemption on any reasonable ground. Thus, not only these two witnesses were playing with the life and liberty of an undertrial, but they had taken the Trial Court for granted. Even otherwise, according to Shri Manoj Kumar Singh, S.P., Bhind, that there was no reason for the witnesses for not appearing before the Trial Court for giving their evidence.

Unfortunately, the Police Department has also issued various circulars including the circular dated 30-3-2019, by which it has been directed that a Gazetted Officer would monitor the execution and non-execution of summons/bailable warrants/warrants of arrest on daily basis. However, it is clear that the Gazetted officer also did not show any respect to the directions issued by the Police Headquarter. Thus, it is clear that the police witnesses and the Gazetted officer, were not only negligent in discharging their duties, but they donot

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have respect for their own senior police officers. It is for the Director General of Police as well as other Senior officers to find out as to whether this conduct of the police witnesses is indicative of indiscipline of their part, or the circulars issued by the Police Head quarters from time to time are merely paper circulars issued with no intention to comply the same. Be that whatever it may be.

Speedy Trial is a fundamental right of the accused being an integral part of Article 21 of the Constitution of India.

The Supreme Court in the case of **Hussainara Khatoon Vs. Home Secretary, State of Bihar**, reported in **(1980) 1 SCC 98** has held as under :

10. We find from the counter-affidavit filed on behalf of the respondents that no reasons have been given by the State Government as to why there has been such enormous delay in bringing the undertrial prisoners to trial. Speedy trial is, as held by us in our earlier judgment dated February 26, 1979, an essential ingredient of “reasonable, fair and just” procedure guaranteed by Article 21 and it is the constitutional obligation of the State to device such a procedure as would ensure speedy trial to the accused. The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial. The State may have its financial constraints and its priorities in expenditure, but, as pointed out by the Court in *Rhem v. Malcolm*: “The law does not permit any government to deprive its citizens of

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constitutional rights on a plea of poverty”. It is also interesting to notice what Justice, then Judge, Blackmun said in *Jackon v. Bishop*:

“Humane considerations and constitutional requirements are not, in this day, to be measured by dollar considerations.”

So also in *Holt v. Sarver* affirmed in 442 F Supp 362, the Court, dealing with the obligation of the State to maintain a Penitentiary System which did not violate the Eighth Amendment aptly and eloquently said:

“Let there be no mistake in the matter; the obligation of the respondents to eliminate existing unconstitutionality does not depend upon what the legislature may do, or upon what the Governor may do, or, indeed upon what respondents may actually be able to accomplish. If Arkansas is going to operate a Penitentiary System, it is going to have to be a system that is countenanced by the Constitution of the United States.”

The State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. It is also the constitutional obligation of this Court, as the guardian of the fundamental rights of the people, as a sentinel on the qui vive, to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional Judges and other measures calculated to ensure speedy trial.

The Supreme Court in the case of **Sheela Barse Vs. Union of**

India reported in (1986) 3 SCC 632 has held as under :

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3.....We have already held in *Hussainara Khatoon (I) v. Home Secretary, State of Bihar* that the right to speedy trial is a fundamental right implicit in Article 21 of the Constitution. If an accused is not tried speedily and his case remains pending before the magistrate or the Sessions Court for an unreasonable length of time, it is clear that his fundamental right to speedy trial would be violated unless, of course, the trial is held up on account of some interim order passed by a superior court or the accused is responsible for the delay in the trial of the case. The consequence of violation of the fundamental right to speedy trial would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of the fundamental right.....

The Supreme Court in the case of **Supreme Court Legal Aid Committee (Representing Undertial Prisoners) Vs. Union of India** reported in **(1994) 6 SCC 731** has held as under :

15.....As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the

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offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters. What then is the remedy? The offences under the Act are grave and, therefore, we are not inclined to agree with the submission of the learned counsel for the petitioner that we should quash the prosecutions and set free the accused persons whose trials are delayed beyond reasonable time. Alternatively he contended that such accused persons whose trials have been delayed beyond reasonable time and are likely to be further delayed should be released on bail on such terms as this Court considers appropriate to impose.....

The Supreme Court in the case of **Kartar Singh VS. State of Punjab** reported in **(1994) 3 SCC 569** has held as under :

84. The right to a speedy trial is a derivation from a provision of Magna Carta. This principle has also been incorporated into the Virginia Declaration of Rights of 1776 and from there into the Sixth Amendment of the Constitution of United States of America which reads, “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...”. It may be pointed out, in this connection, that there is a Federal Act of 1974 called ‘Speedy Trial Act’ establishing a set of time-limits for carrying out the major events, e.g., information, indictment, arraignment, in the prosecution of criminal cases. See *Black’s Law Dictionary, 6th Edn.* p. 1400.

85. The right to a speedy trial is not only an important safeguard to prevent undue and oppressive incarceration, to minimise anxiety and concern accompanying the accusation and to limit the possibility of impairing the ability of an accused to defend himself but also there is a societal interest in providing a speedy trial. This

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right has been actuated in the recent past and the courts have laid down a series of decisions opening up new vistas of fundamental rights. In fact, lot of cases are coming before the courts for quashing of proceedings on the ground of inordinate and undue delay stating that the invocation of this right even need not await formal indictment or charge.

86. The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.

Thus, when there is a bonafide reason, being beyond the control of prosecution which results in delay in trial, then this Court can always consider the question of release of an undertrial on bail. But, whether the State can say that since, its own officers have shown indifference in the matter and for no good reasons, they are not appearing before the Trial Court for recording of their evidence, therefore, the accused should be released on bail?

The answer is **No.**

The State cannot be allowed to become an instrumentality in securing bail for an accused. If the State is of the view that it is

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unable to keep its witnesses present before the Trial Court, without any lapses, then it must make a concessional statement before the Court, thereby conceding to the prayer of the accused for grant of bail. However, the State cannot be permitted to play the game of hide and seek. The State functionaries cannot be permitted to create a situation which may result in grant of bail to the accused. It is the primary duty of the State to maintain law and order in the society by bringing the breakers of law to the Court. Therefore, their officers cannot be permitted to stay away from the Court for no good reason, so that an accused can claim bail on the ground of delay in trial.

However, the breach of fundamental right of a citizen cannot be permitted and it can be compensated in terms of money. The Supreme Court in the case of **Rudul Shah Vs. State of Bihar** reported in **AIR 1983 SC 1086** has held as under :

10.....In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violaters in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental

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rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.

The Supreme Court in the case of **Bhim Singh VS. State of**

J&K reported in **AIR 1986 SC 494** has held as under :

3.....We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs or otherwise is now established by the decisions of this Court in Rudul Sah v. State of Bihar, (1983) 3 SCR 508 : (AIR 1983 SC 1086) and Sebastian M. Hongray v. Union of India, AIR 1984 SC 1026. When a person comes to us with the complaint that he has been arrested and imprisoned with mischevous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case. We direct the first respondent, the State of Jammu and Kashmir to pay to Shri Bhim Singh a sum of Rs. 50,000/- within two months from today. The amount will be deposited

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with the Registrar of this Court and paid to Shri Bhim Singh.

The Supreme Court in the case of **D.K. Basu Vs. State of West**

Bengal reported in **AIR 1997 SC 610** has held as under :

30. How do we check the abuse of police power? Transparency of action and accountability perhaps are two possible safeguards which this Court must insist upon. Attention is also required to be paid to properly develop work culture, training and orientation of the police force consistent with basic human values. Training methodology of the police needs restructuring. The force needs to be infused with basic human values and made sensitive to the constitutional ethos. Efforts must be made to change the attitude and approach of the police personnel handling investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable forms of interrogation.

A similar view has been taken by the Supreme Court in the case of **Sebastian M. Hongray VS. Union of India** reported in **AIR 1984 SC 1026**, **Saheli Vs. Union of India**, reported in **AIR 1990 SC 513**, **Nilabati Behera Vs. State of Orissa** reported in **(1993) 2 SCC 746**, **Nambi Narayan Vs. Siby Mathews & other** reported in **(2018) 10 SCC 804**.

The State cannot seek sovereign immunity in cases of violation of fundamental rights.

This Court is of the considered opinion, that it is a fit case, where the State can be saddled with the liability of making payment

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of compensation to the applicant, who has remained in jail for a period of one year i.e., from 26-3-2020 till 3-4-2020 without any progress in trial which is completely attributable to Inspector Rekhapal and Inspector Ram Naresh Yadav. Since, the fundamental right of the applicant of speedy trial has been grossly violated, therefore, the State is directed to make payment of Rs. 20,000/- by way of compensation to the applicant Jaipal Singh. The State Govt., is further directed to recover the same from the salary of Inspector Rekhapal and Inspector Ram Naresh Yadav. The compensation be credited in the bank account of the applicant within a period of 30 days from today, and it shall be the duty of the S.P., Bhind to ensure that the amount of compensation is deposited within a period of 30 days.

At this stage, it is submitted by Shri Manoj Kumar Singh, S.P., Bhind, that his recommendation for imposing the punishment of Rs. 5000/- appears to be on a lessor side. Therefore, he would take necessary steps for initiating departmental enquiry against Inspector Rekhapal and Ram Naresh Yadav.

So far the departmental action against the erring police officers is concerned, it is the outlook of the police department. This Court is of the view that if the police department is really interested in improving its working, then apart from issuing paper circulars from

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time to time, it must take effective steps in the matter. Since, it is the internal matter of the police department, therefore, this Court doesnot want to indulge itself in the internal affairs of the police department.

So far as the merits of the case is concerned, at present, the functioning of the Courts is under suspension in the wake of Covid 19 pandemic, and in view of the allegations made against the applicant, and with a hope and belief, that the prosecution would examine all its remaining witnesses without any default immediately after the resumption of normal courts functioning, the application filed by the applicant for grant of bail, is hereby **Dismissed**.

Let a copy of this order be send to the Chief Secretary, State of Madhya Pradesh, Director General of Police, Madhya Pradesh, Trial Court as well as to the S.P., Bhind for necessary information and compliance.

Let a copy of this order be placed in the service book of Inspector Rekhapal and Inspector Ram Naresh Yadav.

(G.S. Ahluwalia)
Judge

Arun*