

THE HIGH COURT OF MADHYA PRADESH

M.Cr.C. No.46653/2021

State of M.P. Vs. Smt. Bhuribai

Through Video Conferencing

Gwalior, Dated: 25/01/2022

Shri Ankur Mody, Additional Advocate General with Shri Rajeev Upadhyay, Public Prosecutor for applicant/State.

Shri Sanjay Gupta, Advocate for respondent-Smt. Bhuribai.

Shri Lalit Shakyawar, Superintendent of Police, Morena has joined the Court proceedings through video conferencing from his office.

AIG of Police, CID, Bhopal has filed an affidavit alongwith the report prepared by the Additional Police Commissioner, Bhopal dated 19/1/2022.

2. Unfortunately, report given by the then DIG, Chambal Range, Morena, at present Additional Police Commissioner, Urban, Bhopal is also an another attempt to cover up the lethargy and negligence of the police authorities in executing the summons / bailable warrants / warrants issued against the witnesses. The Police Headquarters has issued two circulars, i.e.30/3/2019 and 3/4/2019, with regard to the daily monitoring of execution of summons / bailable warrants / warrants, however, these circulars have been confined to the warrants issued by the High Court. The Deputy Inspector General of Police, Chambal Range, Morena has concentrated his report on the execution of warrants issued by the High Court, whereas he was aware that this Court is concerned about non-execution of summons / bailable warrants / warrants issued against the witnesses including the police

THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.46653/2021
State of M.P. Vs. Smt. Bhuribai

personnel. The DIG, Chambal Range, Morena has tried to project that now the District Police, Morena is working very efficiently. However, the said opinion formed by the DIG, Chambal Range, Mornea does not give the correct picture and in fact it gives a distorted picture. As per the statement made on 7/12/2021 and thereafter on 7/1/2022, the following warrants were pending:-

S.No.	Summons/Bailable Warrants/Warrants	As on 07.12.2021	As on 07.01.2022
1.	Perpetual warrant of arrest	3738	3350
2.	Warrant of arrest issued against employees	98	51
3.	Warrant of arrest issued against general public	307	104
4.	Bailable warrant issued against employees including police personnel	153	89
5.	Bailable warrant of arrest issued against general public	254	178
6.	Summons issued against employees	128	95
7.	Summons issued against general public	222	206

3. Thus, it is clear that this improvement in the working of the Police Department took place only because this Court took serious note of the lethargy on the part of the police and number of pending warrants / summons reduced. This Court is not interested in monitoring the working of the Police Department. It is the duty of the Police Department itself to function efficiently. The Court is not required to awake the Police Department to discharge its official duties. Speedy trial is not only the fundamental right of an accused,

THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.46653/2021
State of M.P. Vs. Smt. Bhuribai

but it is the paramount duty of the Police Department to provide protection to the witnesses, specifically when the Supreme Court in the case of **Mahender Chawla and others Vs. Union of India and others** reported in (2019) 14 SCC 615 has formulated the witness protection scheme. One way of providing protection to the witnesses is to get their evidences recorded as early as possible without any delay, so that they are not left to the mercy of the accused persons. This Court is concerned about the fact that the Police Department is neither serious in giving protection to the witnesses nor is serious in ensuring early examination of the witnesses in order to avoid any undue pressure on the witnesses.

4. During the course of arguments a question was put to Mr. Lalit Shakyawar, Superintendent of Police, Morena as to whether this Court has ever passed any remark against the working of District Police, Morena while granting bail to any accused or not, then it is submitted by Mr. Shakyawar that he does not remember any such order. The reply given by Mr. Shakyawar was shocking, accordingly, he was directed to read out the order dated 7/12/2021 passed in this case, in which this Court in paragraph 9 had pointed out that in M.Cr.C. No.47332/2021 the bail is being granted only on the ground that the Police Department has miserably failed in getting its witnesses present. It is not out of place to mention here that in that case the accused was in jail from 7/5/2017 and the witnesses were not appearing. The relevant part of order dated 20/10/2021 passed in

THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.46653/2021
State of M.P. Vs. Smt. Bhuribai

M.Cr.C. No.47332/2021 read as under:-

According to the order-sheets of the Trial Court, on 4/10/2018 a bailable warrant was issued against prosecution witness Satish Goyal and summons were issued against Naresh Sharma, ASI T.D. Shukla and Town Inspector Jang Bahadur Singh. The next order-sheet which has been filed by the applicant is dated 28/11/2019. According to this order-sheet also, the prosecution witnesses were absent. The warrant of arrest issued against Jang Bahadur and bailable warrant issued against Naresh Sharma, who both are police personnel, were received back unserved. Thereafter, the case was taken up on 9/1/2020 and on the said date also the bailable warrant issued against Naresh Sharma and warrant of arrest issued against Jang Bahadur were received back unserved. On 6/2/2020 although the prosecution witness Naresh Sharma was present, but the co-accused Bhupesh did not appear and accordingly, his bail bonds were forfeited and warrant of arrest was issued. On 6/3/2020 the warrant of arrest issued against Bhupesh was received back unserved. Thereafter, on account of covid-19 pandemic, the proceedings came to a halt and ultimately by order dated 24/11/2020 the warrant of arrest was once again issued against the absconding accused Bhupesh. By order dated 9/12/2020 it was observed that the warrant of arrest issued against co-accused Bhupesh was not received back either served or unserved and accordingly, fresh warrant of arrest was issued. On 29/1/2021 again the warrant of arrest issued against co-accused Bhupesh was not received back either served or unserved and accordingly, the case was adjourned to 19/3/2021. On 19/3/2021 a report was submitted that co-accused Bhupesh is detained in Dabra jail in connection with some other case and accordingly, production warrant was issued. Thereafter, on 14/6/2021 and 7/7/2021 fresh production warrants were issued and ultimately on 9/7/2021 the co-accused Bhupesh was produced in execution of production warrant. Thereafter, on 28/7/2021 the case was fixed for examination of prosecution witnesses and bailable warrant of arrest was issued against Naresh Sharma and warrant of arrest was issued against Jang Bahadur. Again on 7/8/2021 the police witnesses did not appear. Under these circumstances, this court is left with no other option but to release the applicant on bail.

THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.46653/2021
State of M.P. Vs. Smt. Bhuribai

5. Faced with such a situation, it was submitted by Mr. Shakyawar that he had conducted an enquiry in the said case and it was found that one Constable was responsible and accordingly, he has been saddled with the punishment of censure. It is really shocking that one side the fundamental right of the accused persons of speedy trial is being blatantly violated by the police by not getting its own police personnel present before the Court and at the same time the misconduct of the police personnel in not executing the summons / bailable warrants / warrants is held to be of trivial in nature warranting punishment of censure only.

6. This Court had expected that the senior police officers would look into the matter seriously and would try to improve the things, but unfortunately neither Mr. Shakyawar, Superintendent of Police, Morena nor Mr. Sachin Kumar Atulkar, the then DIG, Chambal Range, Morena took the matter seriously and tried to divert the attention of this Court by giving misleading enquiry report. **The report submitted by Mr. Sachin Kumar Atulkar, the then DIG, Chambal Range, Morena is hereby rejected,** as it has been conducted in a slipshod manner.

7. When the senior police officers are not interested in improving the things, then this Court is left with no other option but to ask the Director General of Police, State of M.P., Bhopal to submit his personal affidavit on the following issues:-

(i) Whether the circulars dated 30/03/2019 and 03/04/2019

THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.46653/2021
State of M.P. Vs. Smt. Bhuribai

issued by the Police Headquarters are not to be followed in case of summons /bailable warrants/ warrants issued by the Trial Court ?

- (ii) Why the circulars dated 30/03/2019 and 03/04/2019 were issued in respect of warrants issued by the High Court only and why not in respect of summons/bailable warrants/ warrants issued by the Trial Court ?
- (iii) Whether the police is under obligation to provide security/protection to the witnesses or not ?
- (iv) Whether the Police Department is under obligation to follow the Witness Protection Scheme formulated by the Supreme Court in the case of **Mahender Chawla (supra)** ?
- (v) What steps have been taken by the Police Department to provide protection to the witnesses as per the Witness Protection Scheme ?
- (vi) Whether the earliest examination of the witnesses is not an important part of a criminal trial, which has been instituted on the basis of the charge sheet filed by the Police Department itself ?
- (vii) Whether the duty of the Investigating Officer comes to an end after filing of the charge sheet or it is the duty of the Police Department to ensure that the witnesses are also produced before the Trial Court without any delay ?
- (viii) Whether the delay in service of summons/bailable

THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.46653/2021
State of M.P. Vs. Smt. Bhuribai

warrants/warrants on the witnesses is not leaving the helpless witnesses at the mercy of the accused persons ?

- (ix) Why the various agencies functioning within the Police Department are not interested in executing the summons/bailable warrants/ warrants issued by the Trial Court ?
- (x) Whether the release of an accused only on the solitary ground of non-execution of summons/bailable warrants/ warrants reflects on the working of the Police Department or not ?
- (xi) Whether the negligence/deliberate attempt/misconduct on the part of police personnel; (a) in not issuing summons/bailable warrants/warrants (by the Court *Moharrir*); (b) by not serving the same to the witnesses is an ordinary misconduct of trivial in nature requiring punishment of censure only or it is violative of fundamental rights of speedy trial as well as violative of victim Protection Scheme formulated by the Supreme Court ?
- (xii) Whether the non-appearance of the police personnel without disclosing any reason to the Trial Court in spite of service of summons/bailable warrants/warrants amounts to a casual mistake on their part or serious misconduct warranting any departmental enquiry against them ?
- (xiii) Whether non-service of summons/bailable warrants/warrants issued against the police personnel is a casual negligence on the part of the Police Department or it is a serious lapse ?

8

THE HIGH COURT OF MADHYA PRADESH

M.Cr.C. No.46653/2021

State of M.P. Vs. Smt. Bhuribai

8. The affidavit should be filed on each and every issue mentioned above.
9. The affidavit must be filed latest by 07/02/2022.
10. List this case on **08/02/2022**.
11. Let a copy of this order be supplied to Shri Ankur Mody, Additional Advocate General for communicating the same to the Superintendent of Police, Morena, who in his turn would communicate it to the Director General of Police, State of MP, Bhopal for compliance.

(G.S. Ahluwalia)
Judge

Arun*