

Madhya Pradesh High Court

Manohar vs State Of M.P. on 2 April, 2007

Equivalent citations: 2007 (3) MPHT 349

Author: A Saxena

Bench: A Saxena

ORDER A.K. Saxena, J.

1. The applicant has filed this application under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail.

2. The short facts for the disposal of this bail application are as follows:

Crime No. 621/06 has been registered by Police Station, Moghat Road, Khandwa under Section 306 read with Section 34 of IPC against the applicant and co-accused. According to prosecution story, the applicant and co-accused used to demand money from the deceased Arun and for that, they used to torture him. They also threatened him to implicate in a false case. The deceased Arun had also paid the amount for several times to the accused persons, but ultimately he committed suicide because of the torture caused to him by all the accused.

3. An application for regular bail was filed in the Sessions Court by the applicant and the same was dismissed on 7-2-07 on the ground that earlier bail application of the applicant was dismissed and thereafter, there is no material change in the circumstances, therefore, the applicant is not entitled for bail even though, co-accused has already been granted bail by the High Court.

4. The learned Counsel for the applicant contended that charge-sheet has already been filed in the Court. The applicant is resident of Pandhana, District Khandwa and there is no likelihood that he will abscond. The co-accused has been enlarged on bail by this Court and the case of present applicant is identical to the case of co-accused and on the principle of parity, the applicant may be enlarged on bail.

5. It is apparent from the record of M.Cr.C. No. 62/07 that an application for regular bail was filed by co-accused Smt. Jaya Bai in the High Court and the same was allowed vide order dated 24-1-07 passed by this Court. It is very much clear from the order impugned that the fact of grant of bail to co-accused by the High Court was in the knowledge of the Additional Sessions Judge, who rejected the repeat bail application of the applicant. In the order impugned, it has been stated that though co-accused Smt. Jaya Bai has been granted bail by the High Court, but after rejection of first application of the applicant, there is no material change in the circumstances and on the basis of changed circumstances only, the applicant could have been enlarged on bail, therefore, the applicant is not entitled for bail.

6. It is very difficult to understand as to what was the thinking of the Presiding Judge behind this order. If, a previous bail application of a person was dismissed on merits by the Court and thereafter, the co-accused has been granted bail by the Higher Court and then another application is moved before the Court, who rejected the previous bail application, it is duty of the Presiding Judge

to consider on the basis of principle of parity whether the case of applicant is identical to the case of co-accused or not. This fact has not been considered at all by the Presiding Judge, while deciding the repeat bail application of the applicant.

7. If an application for bail is rejected on merits by the Lower Court and thereafter, the bail application of co-accused is allowed by the High Court, certainly, it amounts to a material change in the circumstances. It is a well settled law as there are so many citations and I am of the opinion that every judicial officer must be aware of this principle that if an accused is granted bail and the case of co-accused is identical, the co-accused should also be granted bail. It has been held in the case of *Badri Nihale and Ors. v. State of M.P. 2006 (1) MPLJ 166*, that it is a well established principle that if an accused has been granted bail and the other accused is similarly placed, he shall also be entitled to grant of bail. It appears that this settled principle has been ignored by the Presiding Judge in this matter.

8. It would not be futile exercise to mention at this stage that if a judicial officer rejects the bail applications either against the facts of the cases or without any grounds or against the principles settled by Higher Courts, it does not mean that he is an honest judicial officer. Rejection of bail applications in most of the cases cannot be a criteria of honesty. I must say that if an order or judgment is passed in bail applications or other cases against the principles settled by Higher Courts and those principles are known to the Subordinate Judges, certainly, it would amount to contempt of Court also. Dispensation of justice must be according to law and that too without fear or favour. One should not sit in the Court with prenotions or reservations. Therefore, it is not proper on the part of a judicial officer to reject the bail application against the established principles of law known to him. In the present matter, it is very much clear that the Presiding Judge of Sessions Court wanted to reject the bail application anyhow and for that, he tried to mention baseless ground.

9. The earlier bail application of the applicant was dismissed by the Sessions Court and thereafter, the bail application of co-accused Smt. Jaya Bai was allowed by this Court and on a perusal of case diary, I found that the case of Smt. Jaya Bai is totally identical to the case of present applicant Manohar. The High Court granted bail to Smt. Jaya Bai and thereafter, the repeat bail application was filed on behalf of applicant Manohar in the Sessions Court, the applicant ought to have been granted bail by the Sessions Court itself on the basis of principle of parity because grant of bail to Smt. Jaya Bai was a material change in the circumstances. If, in the opinion of Presiding Judge, the case of applicant Manohar was not identical to the case of Smt. Jaya Bai, it should have been disclosed on sound grounds by the Presiding Judge while rejecting the repeat application of the applicant. The Presiding Judge has committed a grave error in writing this fact that even after the bail granted by the High Court to co-accused Smt. Jaya Bai, there is no material change in the circumstances and, therefore, the accused Manohar is not entitled for bail.

10. Considering all the facts and circumstances, I am of the opinion that the applicant is entitled for bail. The application is allowed and it is directed that the applicant Manohar shall be released on bail on his furnishing a personal bond in the sum of Rs. 10,000/- (Rupees Ten thousand) with a surety bond in the like amount to the satisfaction of Chief Judicial Magistrate, Khandwa.