

Narayan Prasad Vs. State of Madhya Pradesh

Narayan Prasad Vs. State of Madhya Pradesh

SooperKanoon Citation : sooperkanoon.com/504792

Court : Madhya Pradesh

Decided On : May-07-1992

Reported in : 1993(0)MPLJ1

Judge : Faizanuddin, ;K.M. Agrawal and ;K.L. Issrani, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 389 and 439

Appeal No. : Cri. A. No. 173 of 1992

Appellant : Narayan Prasad

Respondent : State of Madhya Pradesh

Advocate for Pet/Ap. : Surendra Singh, Amicus Curiae

Judgement :

Faizanuddin, J.

1. This Criminal Appeal has been placed before this Full Bench on a reference made by a Division Bench of this Court (Gwalior Bench) comprising of Dr. T.N. Singh and S.K. Dubey, JJ.; on the controversy which surfaced on account of an earlier Division Bench decision of this Court (main-seat) rendered in State of M.P. v. Chandrahas, 1991 MPLJ 779 and a decision of the Apex Court in Shahzad Hasan Khan v. Ishtiaq Hasan Khan, AIR 1987 SC 1613, on the question of disposal of successive bail applications, by the same Judge or Bench as the case

may be which according to the referring Division Bench are conflicting to the decisions requiring determination of the point in controversy by a Larger Bench as the referring Bench did not agree with the view expressed by the Division Bench of this Court in Chandrahas (supra).

2. The Division Bench making a reference has not precisely put the controversy in the form of a question to be resolved by this Full Bench, however, this controversy would be clear from the facts as they emerge from the order of reference and material on record which we are stating hereinafter.

3. In Sessions Trial No. 127 of 1983 decided on 3rd September, 1984, the Sessions Judge, Gwalior, convicted the appellant under Section 302 of the Penal Code and sentenced him to life imprisonment. The appellant challenged his conviction and sentence before the High Court, Gwalior, by preferring Criminal Appeal under Section 374 of the Code of Criminal Procedure. Besides the application dated 21st October, 1991 (I. A. No. IV), there are several applications on record dated 6th April, 1985; 13th October, 1987 and 8th December, 1987, but it is not clear whether they were disposed of and if so, by which Bench. It appears that some applications of the appellant for suspension of sentence were considered by the referring Bench comprising of Dr. T.N. Singh and S.K. Dubey, JJ., on 6th July, 1989, which was rejected with the direction that the appeal itself be listed for hearing in the month of September, 1989, but the appeal could not be so listed nor heard in September 1989. The appellant, therefore, made another application dated 21st October, 1991 (I.A. No. IV) for suspension of sentence which came up for consideration before the same Division Bench comprising of Dr. T.N. Singh and S.K. Dubey, JJ. During the course of arguments, Shri R.K. Sharma learned counsel appearing for the complainant, placing his reliance on the Division Bench decision of this Court, in the case of Chandrahas (supra) raised an objection that since the Division Bench was only sitting as a Special Bench, the bail application (I.A. No. IV) could not be heard and considered by it but according to the view expressed in Chandrahas (supra), it can be heard and decided only by Regular Division Bench. Learned Judge of the referring Division Bench expressed disagreement with the view taken by a Division Bench of this Court in the case of Chandrahas (supra) as according to them it has the effect of nullifying the decision

rendered by another Division Bench of this Court in *Munna Singh v. State of M.P.*, 1989 MPLJ 414 and also found it to be in conflict with the view taken by the Supreme Court in *Shahzad Hasan Khan (supra)* and, therefore, this reference to the Larger Bench to resolve the question of disposal of successive bail application so that a consistent and indiscriminative practice be followed at all the Bench of this Court in that behalf.

4. When this reference was placed before this Bench, we issued S.P.C. twice to Shri J.P. Gupta and Shri R.K. Sharma learned counsel appearing for the appellant and complainant respectively in this Criminal Appeal at Gwalior Bench, but they did not appear. We, therefore, requested Shri Surendra Singh, a Senior Counsel of this Court, to act as *amicus curiae* to assist the Court, who readily accepted and rendered his valuable assistance for which we are thankful to him. Shri Surendra Singh. learned counsel, argued that there is absolutely no conflict in the decisions referred to in the referring order and both prevail in their respective fields covered by them. Shri Dilip Naik, learned Deputy Advocate General, appearing for the State, also agreed with the said arguments.

5. Admittedly, there is no law nor any statutory Rule laying down that the subsequent bail applications should be placed before the same Bench or the Judge, for disposal, who passed the earlier orders on the bail application of an accused. But in course of time, a long standing convention, based on judicial propriety and sound judicial discipline, has developed to the effect that once the bail application of an accused has been disposed of/rejected by a Bench or any Judge, then all the subsequent bail applications should be placed before the same Bench or Judge who passed the earlier orders provided he is available. The reasons for so doing are obvious and multifarious. Experience shows and it is common knowledge also that when the application of an accused/appellant is rejected by a Bench or a particular Judge then that accused/appellant is disinclined to repeat another bail application, at a later stage, either on the identical grounds as were raised and rejected earlier or on new material before the same Bench/Judge and ventures to take chance before another Bench/Judge of his choice on the expectation that he might get a favourable order. Most often, during the course of an argument on bail application when the counsel appearing

for the accused/appellant senses a feeling or gathers an impression that he would not be able to secure favourable order, at that stage from a particular Bench or a Judge, he comes forward with a request for withdrawal of the application which is normally dismissed as withdrawn. Similarly, an accused/appellant whose earlier bail application has been rejected by a particular Bench or a Judge would wait till that honourable Judge is out for a short interval or during vacation to make a subsequent bail application and take a chance before another Bench or a Judge. If in all such circumstances the accused/appellant is given the liberty to make subsequent bail applications at his convenience and choice before any other Bench or Judge, it would definitely lead to hazardous results and it is for these reasons that the Supreme Court in the case of Shahzad Hasan Khan (supra) reiterated that according to the prevailing practice the subsequent bail application should be placed before the same Judge who had disposed of the earlier application.

6. In the case of Shahzad Hasan Khan (supra), the first and second bail applications of the appellant of that case were rejected by Mr. Justice Kamleshwar Nath of Allahabad High Court. After a few days another application for bail was made before another Judge (Mr. Justice P. Dayal) who according to the prevailing practice rightly directed it to be placed before Mr. Justice Kamleshwar Nath, who had disposed of his earlier bail applications. This third bail application was placed before Mr. Justice Kamleshwar Nath with his permission, when he was sitting in a Division Bench and, therefore, he released the bail application. In spite of this order of release, the bail application was again placed before Mr. Justice Kamleshwar Nath for disposal on 24-3-1986. But the counsel for the appellant did not press the bail application, consequently it was dismissed as withdrawn. Yet another application for bail was moved on 3-6-1986 on behalf of the appellant, before the vacation Judge Mr. Justice D.S. Bajpai, who also directed it to be placed before Mr. Justice Kamleshwar Nath, who had to sit as vacation Judge with effect from 23-6-1986. But after a couple of days an application was moved before Mr. Justice D.S. Bajpai with a prayer to recall his earlier order dated 3-6-1986 whereby he had directed the bail application to be placed before Mr. Justice Kamleshwar Nath. Despite various objections advanced by the Assistant Government Advocate and counsel appearing for the complainant, Mr. Justice

D.S. Bajpai overruled all the objections, heard the arguments, recalled his earlier order dated 3-6-1986 and bailed out the appellant of that appeal. In the light of aforementioned facts, their Lordships of Supreme Court felt disturbed and did not approve the disposal of subsequent bail application and grant of bail by Mr. Justice D.S. Bajpai and in para 5 of the report observed as under :

'We are of the opinion that Justice D.S. Bajpai should not have recalled his order dated June 3, 1986 keeping in view the judicial discipline and the prevailing practice in the High Court. Justice D.S. Bajpai was persuaded to the view that Justice Kamleshwar Nath had passed orders on March 18, 1986, releasing the bail application the matter was therefore not tied up to him. However, the learned Judge failed to notice that when the bail application was listed before Justice Kamleshwar Nath on March 24, 1986 the respondent No. 1 for reasons known to him only, withdrew his application, as a result of which Justice Kamleshwar Nath dismissed the same as withdrawn. This fact was eloquent enough to indicate that respondent No. 1 was keen that the bail application should not be placed before Justice Kamleshwar Nath. Long standing convention and judicial discipline required that respondent's bail application should have been placed before Justice Kamleshwar Nath who had passed earlier orders, who was available as Vacation Judge. The convention that subsequent bail application should be placed before the same Judge who may have passed earlier orders has its roots in principle. It prevents abuse of process of Court depending on whether the Court is to his liking or not, and is encouraged to file successive applications without any new factor having cropped up. If successive bail applications on the same subject are permitted to be disposed of by different Judges these would be conflicting orders and a litigant would be pestering every Judge till he gets an order to his liking resulting in the credibility of the Court and the confidence of the other side being put in issue and there would be wastage of Courts' time. Judicial discipline requires that such matter must be placed before the same Judge, if he is available for orders. Since Justice Kamleshwar Nath was sitting in Court on June 23, 1986, the respondent's bail application should have been placed before him for orders. Justice D. S. Bajpai should have respected his own order dated June 3, 1986 and that order ought not to have been recalled, without the confidence of the parties in the judicial process being rudely shaken.'

7. From the Supreme Court case (supra), it is distinctly clear that though the criminal appeal may have been placed before any Bench for hearing but the subsequent bail applications of the appellant have to be necessarily placed before the same Bench or learned Judge for disposal, if he is available, who had passed the earlier orders. Similar view has been expressed by a Division Bench of this Court in the case of Munna Singh (supra). But the decision in the case of Chandrahas (supra) deals with different facts and with quite a different aspect of the matter which has not been touched in any of the two decisions namely, Shahzad Hasan Khan and Chandrahas (supra).

8. In the case of Chandrahas, the accused was committed to sessions for trial for various offences who moved bail application under Section 439 of the Code before the Sessions Judge, Raipur, which was rejected by the Sessions Judge on merits. Later on, the Sessions Judge made over the sessions trial to the Court of IIIrd Additional Sessions Judge. After the sessions trial was made over and transferred to the Court of IIIrd Additional Sessions Judge, the accused Chandrahas again moved bail application before the Sessions Judge, probably under the impression that it being subsequent application, would be entertainable by him only as he had passed the earlier order on the first bail application. The learned Sessions Judge transferred this second bail application to the Court of IIIrd Additional Sessions Judge before whom the trial was pending. However, the IInd Additional Sessions Judge sent back the bail application along with the record of the sessions trial to the Court of Sessions Judge for disposal of the second bail application as the earlier bail application was rejected by him. The Sessions Judge did not decide the second bail application and on the contrary, he again transferred it to the Court of IIIrd Additional Sessions Judge for disposal with the remarks that since the sessions trial against the accused was pending in his Court and hence the bail application should also be disposed of by him only. Having regard to the propositions laid down in the case of Shahzad Hasan Khan and Munna Singh (supra), the IIIrd Additional Sessions Judge was placed in a dilemma and was unable to decide by himself as to which of the two courses is correct. Learned IIIrd Additional Sessions Judge, therefore, made a reference to this High Court under Section 395(2) of the Code seeking guidance in the matter. It was in these circumstances that a Division Bench of this Court in the case of Chandrahas took

the view that after the sessions trial has been made over for the trial to the Court of Additional Sessions Judge, the Sessions Judge ceases to exercise jurisdiction over interlocutory application including bail applications filed in the sessions trial in spite of rejection of earlier applications by the Sessions Judge and that the subsequent bail applications if any filed after the case have been made over for trial to an Additional Sessions Judge, shall be disposed of by him only and not by the Judge who had rejected the earlier bail applications.

9. We find ourselves in respectful agreement with the view taken by the Division Bench in the case of Chandrahas (supra) as the same neither militates nor is in conflict with the view taken by their Lordships of the Supreme Court in the case of Shahzad Hasan Khan or with the view taken by a Division Bench of this Court in Munna Singh, as this aspect of the matter was not in issue nor considered in any of the two decisions referred to above. As said earlier, there is no law or any statutory rule making it obligatory that all subsequent bail applications should be placed before the same Bench or Judge who passed earlier orders but it is only a rule of convenience based on judicial discipline, developed by a long standing convention. The main purpose and object behind it is to prevent abuse of the process of Court, avoidance of an opportunity to an accused or appellant to select any Court or Bench of his choice to make successive applications for bail, to avoid delay and conflicting orders by different Judges on the same subject matter and to discourage a litigant from pestering every Judge till he gets an order of his liking effecting the credibility of the Court and the confidence of the other side. It is for these reasons that the judicial discipline demands that the subsequent bail application should be placed before the same Judge who passed the earlier orders. But none of these objects and principles would be defeated or affected if the subsequent bail applications are made or entertained by the Judge before whom a sessions trial has been made over or transferred for trial, instead of the Sessions Judge who passed orders on the earlier application, because in such an event the accused has no liberty or option of selecting a Judge of his liking or choice but he has to make all interlocutory applications to the Judge before whom the trial is pending and thereby no judicial discipline or any principles of judicial propriety would be violated. On the contrary, it would avoid unnecessary delay in disposing of the interlocutory applications as otherwise every time the records

along with such applications would have to be transmitted to the Sessions Judge who had disposed of any earlier application on the subject. This apart, subsequent bail applications may be presented at different stages of the trial and in such a case, the Judge to whom the case has been made over for trial is the proper Judge to deal with all the subsequent bail applications made at different stages as the trial proceeds on and he alone is fully aware of the demeanour of the witnesses and the evidence adduced against the accused making subsequent application for bail during the course of trial.

10. But in the present case no such situation exists as it existed in the case of Chandrahas. It is a simple case where the earlier orders on the bail applications were passed by the Division Bench consisting of Dr. T.N. Singh and S.K. Dubey, JJ. and therefore, in our opinion, the subsequent bail application should be heard and decided by that Bench alone, the same being available also. The question whether it is a Special Bench or a Regular Bench is irrelevant. We answer the reference accordingly. The matter be placed now before the referring Division Bench for consideration and disposal of I.A. No. IV according to law.