AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 6123 of 2020

RESERVED ON 8-12-2020

DELIVERED ON 9-12-2020

Bittu S/o Nanakchand Aged About 21 Years R/o B-3-454, Duggal, Faram, Kakrola Mod, Metro Station, West Delhi, District West Delhi. ---- **Applicant**

Versus

State Of Chhattisgarh Through Police Station Devendra Nagar, District Raipur Chhattisgarh.

---- **Respondent**

For the Applicant : Shri Atanu Ghosh, Advocate
For the State : Shri D.C. Verma, Govt. Advocate

Hon'ble Shri Justice Sharad Kumar Gupta

CAV ORDER

1. Without commenting as to who were the mistake men, this Court expresses that the present case is classic example of travesty of justice where two co-accused namely Ajit Rai and Ilias Ahmed Khan Deshmukh were released on bail by 4th Addl. Sessions Judge, Raipur whose earlier bail applications were rejected by this Court. Distinguished features of the case are as under :-

a. On 11-04-2019 this Court had rejected the bail applications of applicant and co-accused Ajit Rai and Ilias Ahmed Khan Deshmukh considering prima facie case against them in MCRC No. 1034/2019, MCRC No. 1555/2019 and MCRC NO. 2146/2019.

b. Thereafter, on 3-2-2020 coordinate bench of this court granted bail to co-accused Rakesh Kartik Singh vide order dated 3-2-2020 passed in MCRC NO. 7930/2019.

c. Thereafter, co-accused Ajit Rai and Ilias Ahmed Khan Deshmukh whose earlier bail applications were rejected by this Court on merit, approached to 4th Addl. Sessions Judge, Raipur who vide order dated 18-2-2020 and 24-2-2020, granted them bail relying on principle of parity in the light of bail order of coordinate bench dated 3-2-2020.

d. Thereafter, applicant approached this Court and sought bail on principle of parity. This Court rejected the bail application of the applicant vide order dated 4-11-2020 passed in MCRC No. 6123/2020

observing that looking to the distinct features of this case, principle of parity does not attract in favour of the applicant.

e. From minute examination of bail papers of accused Ajit Rai, it is disclosed that his Advocate made averment in para 7 of his bail application that :-

> "7. यह कि, आवेदक/आरोपी का यह द्वितीय जमानत आवेदन पत्र है, इसके पूर्व प्रथम जमानत आवेदन पत्र माननीय चतुर्थ अतिरिक्त जिला एवं सत्र न्यायाधीश रायपुर छ.ग. के द्वारा दिनांक 16.01.2019 को निरस्त किया गया था, इसके अतिरिक्त अन्य कोई भी जमानत आवेदन पत्र किसी भी सत्र न्यायालय और माननीय उच्च न्यायालय में लंबित नहीं है।''

f. In support of bail application of Ajit Rai, His brother in law (loser) Mr. Ravi Ranjan Rai filed an affidavit para 2 of which reads as under:-

> "2. यह कि , उक्त आवेदक की यह द्वितीय जमानत आवेदन पत्र इसके अतिरिक्त अन्य कोई जमानत आवेदन पत्र माननीय उच्च न्यायालय बिलासपुर एवं जिला एवं सत्र न्यायालय रायपुर में लंबित नहीं है।"

g. The bail application of co-accused Iliash Ahmad Khan Deshmukh reveals that there is no averment regarding earlier bail application.

h. Ayesha Ilias Deshmukh wife of co-accused Iliash Ahmad Khan filed an affidavit in support of bail application of co-accused Ilias Ahmed Khan para 2 of which reads as under :-

> "2. यह कि माननीय न्यायालय के समक्ष यह तृतीय जमानत आवेदन पत्र है इसके अलावा अन्य किसी न्यायालय या उच्च न्यायालय में ना ही विचाराधीन है ना ही निराकृत हुआ हैं।"

2. In the matter of **Shri Hari Mohan Dixit -v- State of MP** [CRLR(MP) 1986 Pg. 211], Hon'ble M.P. High Court observed in para 5 as under :-

> "5..... A counsel who drafts the bail petition ought to take instructions preferably written instructions on the the point whether any bail application is pending in the Court of coordinate jurisdiction or not. In case he is unable to get any information on the point he ought to specifically mention that even on inquiry he has not been able to know anything about the matter. If such averments are lacking in the bail petition and then it comes to the notice of the Court that in fact there had been pending petition in the Court of coordinate jurisdiction the counsel will certainly have to answer for omission in the bail petition."

3. In the matter of **State of MP -v- R.P. Gupta, Advocate**, 2000(1)

MPHT 509, Hon'ble MP High Court observed in para 8 as under :-

> "8. It is hereby made clear for future guidance that in an application under Section 439 Cr.P.C. full particulars of the person or persons be given from whom the counsel of applicant has received written instructions to file the application, clearly indicating the number with results of the earlier applications moved on behalf of an accused."

4. In the matter of **Bimla Devi -v- Sate of Bihar and others** reported in 1994(2) SCC 8 Hon'ble Supreme Court observed in para 2 as under :-

> "2. …..but the disturbing feature of the case is that though two successive applications of the accused for grant of bail were rejected by the High Court yet the learned Magistrate granted provisional bail. The course adopted by the learned Magistrate is not only contrary to settled principles of judicial discipline and propriety but also contrary to the statutory provisions (See in this connection. The manner in which the learned Magistrate dealt with the case can give rise to the apprehensions which were expressed by the complainant in her complaint, which was treated by this Court as a writ petition and is being dealt with as such. In the course that we are adopting, we would not like to comment upon the manner in which the learned Magistrate dealt with the case any more at this stage. We, in the facts and circumstances stated above, direct that a copy of this order be sent to the Chief Justice of the Patna High Court for taking such action on the administrative side as may be deemed fit by him."

5. In the matter of **Shahjad Hasan Khan -v- Ishtiaq Hasan Khan and another** [1987 CRLJ 1872], Hon'ble Supreme Court observed in par 5 as under :-

> "Where after three successive bail applications of an accused involved in a murder case were rejected by a particular Judge of the High Court and subsequent application was also directed by another Judge sitting as vacation Judge to be placed before the former Judge who was afterwards available as vacation Judge, the latter should not have, on a subsequent date, to the passing of the order recalled his order and entertained the bail application

and ordered the release of the accused in disregard of the prevailing practice of the High Court that subsequent bail application should be placed before the Judge who had disposed of the earlier applications."

6. Following legal propositions emerge in the case in hand:-

The appropriate Court to hear the successive bail application/s:-

a. Successive bail applications of an accused would be placed before the same Judge who rejected the earlier bail application, if he is available;

If the earlier bail application is rejected by higher forum then who will entertain the subsequent bail application :-

b. When the bail application is rejected by higher forum then subsequently, subordinate forum can neither grant the regular bail nor interim bail, if subordinate forum does so then it would be contrary to settled principle of judicial discipline and propriety and also against the statutory provisions; unless otherwise directed by higher forum.

Duty of the counsel of an accused for filing bail application :-

c. Counsel of an accused is bound to make clear averments indicating number with results of the earlier application/s moved on his behalf or that he is unable to know about the same after due inquiry.

Duty of the subordinate court :-

d. Subordinate court is under obligation before disposal of the bail application to examine as to whether the aforesaid averments are incorporated in bail application, if not, then he should compel the concerned counsel to make such averments in bail application, if he fails to do so, then trial court is not under obligation to dispose of the same on merit.

7. In the case in hand, in the bail application of accused Ajit Rai and in the affidavit filed in support of his bail application, it has not been mentioned that whether bail application was filed before the High Court or not and if yes, then what was the result. The 4th Addl. Sessions Judge Mr. Vivek Kumar Verma overlooked this aspect. He ought to have compelled the counsel for the accused Ajit Rai to furnish such information before disposal of his bail application. Despite of lack of

such information he proceeded for disposal of the bail application. It is expected from every judge of subordinate judiciary that in future he would be vigilant while dealing with such type of situation.

8. The 4th Addl. Sessions Judge, Raipur is directed to proceed against all mistake men in accordance with law and procedure because material fact of rejection of bail applications by this Court was suppressed from him and Ayesha Ilias Deshmukh had given wrong affidavit that no bail application of co-accused Ilias Ahmed Khan Deshmukh was decided by High Court. The MJC be disposed of expeditiously preferably within a period of 3 months from the date of receipt of a copy of this order.

9. A copy of this order be circulated to all the judicial officers of the State, after due approval from Hon'ble the Chief Justice.

10. M.Cr.C. is accordingly disposed of.

Sd/-
(Sharad Kumar Gupta)
Judge

Pathak