

HIGH COURT OF MADHYA PRADESH, JABALPUR**BENCH AT INDORE****S.B.: Hon'ble Shri Justice Subodh Abhyankar****Miscellaneous Criminal Case No.29219/2021**

(Hirdesh Sahu s/o Jagdish Sahu
Versus
The State of Madhya Pradesh)

(Case was heard on 17th June, 2021)

Counsel for the Parties : Mr. P.K. Saxena, learned Senior Counsel along with Shri Yogesh Bajad, learned counsel for the applicant.
Ms. Poorva Mahajan, learned Panel Lawyer for the respondent / State of Madhya Pradesh.

Whether approved for reporting : Yes

Law laid down : The examination of the witness shall be held as expeditiously as possible; and the same shall be continued on day to day basis till its conclusion.

The Judge ought to have seen the sensitivity of the matter and should not have given such long date for the purposes of cross-examination which has led to the material witness turning hostile, seriously jeopardizing and undermining the efforts made by the police officers to bring home the charges against the accused persons, and to say the least, of the cost involve in the rescue operation which is always borne by the State.

Lest it is again forgotten, it is hereby directed to all the judges of the trial court, to ensure the compliance of Section 309 of Cr.P.C. and specially in sensitive cases like murder, abduction and rape, provisions of s.309 of Cr.P.C. should be observed religiously, without fail and cases should not be adjourned on the drop of a hat.

Relied on Section 309 of the Code of Criminal Procedure, 1973.

Significant paragraph numbers : 10 to 14

O R D E R

Post for

24.06.2021

(Subodh Abhyankar)
Judge

High Court of Madhya Pradesh, Jabalpur
Bench at Indore
Miscellaneous Criminal Case No.29219/2021

(Hirdesh Sahu s/o Jagdish Sahu
Versus
The State of Madhya Pradesh)

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Mr. P.K. Saxena, learned Senior Counsel along with Shri Yogesh Bajad, learned counsel for the applicant.
Ms. Poorva Mahajan, learned Panel Lawyer for the respondent / State of Madhya Pradesh.

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ORDER

(Passed on this 24th day of June, 2021)

This is the applicant's **fourth** bail application under Section 439 of Criminal Procedure Code, 1973. He is implicated in connection with Crime No.80/2019 registered at Police Station Heera Nagar, Indore District Indore (MP) for offence punishable under Sections 364-A and 120-B read with Section 34 of the Indian Penal Code, 1860. His first bail application Miscellaneous Criminal Case No.26253/2019 was dismissed on merits by this Court on 24.07.2019 whereas second bail application Miscellaneous Criminal Case No.17429/2020 was dismissed as withdrawn on 11.06.2020 with liberty to file fresh application along with Court statement the witnesses examined before the trial Court and third bail application, Miscellaneous Criminal Case No.20960/2020 was dismissed as withdrawn on 13.07.2020.

The applicant is in jail since 14.02.2019.

2. The applicant is arrested in connection with the aforesaid offence whereby a boy aged seven years was kidnapped for ransom.

3. Learned Senior Counsel for the applicant Shri P.K. Saxena has vehemently argued before this Court that the victim himself has not supported the case of the prosecution and has clearly deposed in his cross-examination that he has identified the accused persons as he was directed by the Police uncle and earlier also, he had deposed as per the dictates of the Police uncle, as he is afraid of Police.

4. Counsel has further submitted that even the independent witness PW-6 Jai Prakash has not supported the case of the prosecution.

5. Counsel for the respondent State, on the other hand has opposed the prayer.

6. Heard.

7. On due consideration of the submissions and on perusal of the case diary as also the deposition of the victim, this Court finds that so far as the examination-in-chief of PW-2 victim is concerned, he has clearly identified the accused persons, as the persons who had abducted him. However, after his examination-in-chief on 04.10.2019, his cross-examination was conducted after more than two months i.e. on 18.12.2019 and this time, he has not supported the case of the prosecution, denying his earlier statement on the ground that he is afraid of Police personnel and they had asked him to depose in a particular manner supporting the case of the prosecution.

8. It is also found that the other eye witness PW/6 Jaiprakash who was examined on 04.03.2021 and other independent witnesses have also not supported the case of the prosecution.

9. After careful examination of the material available on record, this Court is not inclined to accept the contention of the learned Senior Counsel and is not inclined to allow the bail application.

10. So far as the deposition of the victim in his cross-examination is concerned, apparently he has not supported the case of the prosecution however, he has affirmed his kidnapping by the accused persons by identifying them in his examination-in-chief, thus, in the considered opinion of this court, it is for the trial Court to examine the aforesaid aspect of the matter while passing the final judgment; as this Court cannot venture into appreciating the evidence at this stage.

11. This court had also called for the proceedings of the Trial court to see as to why after the victim child witness's examination-in-chief on 04.10.2019, he was cross examined only on 18.12.2019 i.e. after more than two months, and it was found that on 04.10.2019 the examination could not be completed due to end of court hours and the case was fixed on 13.11.2019 i.e. after more than 39 days and there after on 13.11.2019 and 28.11.2019, the child witness remained absent and finally on 18.12.2019 he was cross-examined and took a somersault from his earlier story by denying everything. It is apparent that in the meantime, he was won over by the accused persons. At this juncture it would be necessary to refer to sub-section (1) of s.309 of Cr.P.C. which reads as under:-

“Section “S. 309 (1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses

has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.”

(emphasis supplied)

12. This court is well aware of the time constraints of the trial courts for myriad of reasons but it appears that the aforesaid provision of law has been given a complete go-by by the learned judge of the trial court while fixing the date for cross-examination. The relevant excerpts of the order dated 04.10.2019 read as under:-

04.10.2019

“.....
 प्रकरण अभियोजन साक्ष्य हेतु नियत है।
 अभियोजन साक्षी रोहित जैन एवं अक्षत जैन उपस्थित।
 अभियोजन साक्षी रोहित जैन अ.सा.-1 को शेष प्रतिपरीक्षण उपरांत उन्मुक्त किया गया तथा अभियोजन बाल साक्षी अक्षत जैन से प्रश्न पूछे गये उसके द्वारा दिये गये उत्तर को दृष्टिगत रखते हुवे साक्षी प्रश्नों को समझकर उनका उत्तर देने में सक्षम प्रतीत होने के कारण उसका मुख्य परीक्षण प्रारंभ किया गया तथा न्यायालयीन समय समाप्त होने के कारण साक्षी का प्रतिपरीक्षण सीगित किया जाकर आगामी पेशी तारीख की सूचना देकर उन्मुक्त किया गया।
 प्रकरण अभियोजन साक्षी अक्षत जैन के प्रतिपरीक्षण हेतु दिनांक 13/11/2019 को पेश हो।”

13. This court is at pains to see the casual manner in which the next date is fixed in this case. In the considered opinion of this court the learned judge ought to have seen the sensitivity of the matter and should not have given such long date for no apparent reasons for the purposes of cross-examination which has led to the material witness turning hostile, seriously jeopardizing and undermining the efforts made by the police officers to bring home the charges against the accused persons, and to say the least, of the cost involve in the rescue operation which is always borne by the State.

14. In such circumstances, lest it is again forgotten, it is hereby directed to all the judges of the trial court, to ensure the compliance of Section 309 of Cr.P.C. and specially in sensitive cases like murder, abduction and rape, it should be observed religiously, without fail and cases should not be adjourned on the drop of a hat.

15. Let a copy of this order be forwarded to the Registrar General for its proper compliance.

16. Resultantly, Miscellaneous Criminal Case No.29219/2021 being devoid of merits is hereby dismissed with the aforesaid observations.

(Subodh Abhyankar)
Judge