

(95)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

MISC.CRI.CASE NO. 2581 OF 1995

Chandra Kant Shah ...Petitioner

v.

State of Madhya Pradesh,
through C.B.I. ...Respondent

FIXED FOR 23.6.1995 FOR MOTION HEARING

ADDITIONAL GROUNDS TO THE BAIL APPLICATION

The petitioner Chandra Kant Shah begs to file the following additional grounds :

1. The petitioner was ^{taken} into custody on 13.12.1991. Whilst in judicial custody, he was sent to the hospital for emergency treatment from where he was abducted by Naxalites on 26.4.1992 and was kept by them in custody till 19.10.1993, when he was released and he immediately surrendered himself before the Chief Judicial Magistrate, Raipur.

2. Thus, the petitioner has been in judicial custody from 13.12.1991 to 28.4.1992, i.e. for a period of 4½ months and from 19.10.1993 to the present date, i.e. one year and eight months; thus aggregating the period of judicial custody to more than two years.

3. The last bail petition of the petitioner

*upto 20/12/91
before Advt. cat
to Chd
under Advt. cat
BE/401*

[Signature]
18/98
14/10/98

was dismissed on merit on 29.9.1994 in Misc. Criminal Case No. 3529 of 1994. It was dismissed essentially for the following reasons :

- (1) The C.B.I. had argued that the petitioner had absconded from the hospital on 28.4.1992 and after his surrender, the petitioner had been prosecuted for an offence punishable under section 224 of the Indian Penal Code. This trial has ended in acquittal of the petitioner and, therefore, this ground does not survive any more.

The trial was held before the Chief Judicial Magistrate, Raipur in Criminal Case No. 1687 of 1992 which was decided on 25.4.1995 and the learned trial Magistrate held that the prosecution has not been able to establish that the accused had absconded from any lawful custody and, therefore, acquitted him of the offence under section 224 I.P.C.

- (ii) ^{Other...} The reason for rejecting the bail application was that the name of the petitioner in " the case against the present accused/applicant stands/ ^{on some what} ~~on the~~ ^{same} footing as the case against the other co-accused who have been released on bail. Added to it, it is alleged that the petitioner had absconded during

invested, etc. as well as alleged to have absconded from judicial custody."

Regarding this ground, it is respectfully submitted that this Hon'ble Court has made reference to the revision filed by the co-accused Kobl Chand Shah in which it was directed that the trial will be concluded as early as it may be possible, preferably within a reasonable period of six months. The period of six months expired on 24.3.1995, an order in Kobl Chand Shah's case was passed on 12.9.1994 in Criminal Revision No. 319 of 1994.

It is further respectfully mentioned that recording of evidence in the case has began on 8.8.1994 and till date only 52 witnesses, out of 312 witnesses mentioned in the list of witnesses, have been examined so far.

4. According to the case diary statements, the petitioner is incriminated in the case essentially on the evidence of eleven witnesses. The petitioner had been orally requesting the learned prosecutor for the C.B.I. to examine such witnesses as incriminate the petitioner instead of examining witnesses deposing to general type of evidence, but since no heed was paid to these requests, on 2.4.1995, the petitioner filed an application

before the trial Court that those witnesses as given in the application may please be examined in the case in the next sitting of the Court. The learned public Prosecutor took time till next date, i.e. 21.4.1995 to reply to this application. However, on 21.4.1995 the learned Prosecutor for the C.B.I. wanted further time till next date, i.e. 21.5.1995. On 23.5.1995 the learned Prosecutor made a statement that all his witnesses are material witnesses.

5. Thus, the prosecution is deliberately avoiding examination of material witnesses, in spite of the order of this Hon'ble Court in Misc. Criminal Case No. 90 5202 of 1994 decided on 26.10.1995 wherein it was ordered that: "Now the evidence shall be recorded in two weeks on each succeeding month. It is expected and hoped that the prosecution shall list material witnesses only in the first week and formal witnesses in the next week." This order was passed in the presence of the learned public Prosecutor for the C.B.I., Shri S.K.Saxena, who was in-charge of conducting the prosecution in the Court of the Sessions Judge, Burg.

6. The case was fixed for recording of evidence on 6.6.1995 for examination of witnesses 1 to 7; on 7.6.1995 for examination of witnesses 8 to 14; and on 8.6.1995 for examination of witnesses 15 to 22. (These numbers were taken from the list of witnesses supplied by the prosecution for examination on these dates). On 6.6.1995, the C.B.I. applied that the case be

adjourned on the ground that :

- (1) The matter is fixed for examination of witnesses today.
- (ii) Shri S.K.Saxena, Special Public Prosecutor, was conducting this case earlier. At present, appointment has got to be made of the Special Public Prosecutor and, therefore, it is not possible to examine witnesses from 6.6.1995 to 8.6.1995. For these reasons the case may please be adjourned and on the next date the Special Public Prosecutor would conduct the case (translated).

7. In spite of objection by the accused persons, the case was adjourned.

8. Therefore, it is submitted that above mentioned change of circumstances have taken place, which, it is most respectfully submitted, enables the petitioner to file this additional grounds.

9. These grounds are in addition to the ground already taken in the main application for bail, which is fixed for hearing on 23.6.1995.

10. The petitioner begs to file all the documents mentioned above along with this application for convenience.

100 (100)

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P R A Y E R

It is respectfully prayed that the additional grounds may please be accepted as grounds for the main application.

JABALPUR,

COUNSEL FOR PETITIONER

Dt. 20.6.35