IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,
CHIEF JUSTICE
&
HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT PETITION NO. 18931 OF 2017..

ROOP SINGH ALAWA

VS.

STATE OF MADHYA PRADESH AND ANOTHER.

Appearance:

Shri Prahlad Choudhary- Senior Advocate with Shri Aditya Narayan Sharma- Advocate for the petitioner.
Dr. S.S. Chouhan- Government Advocate for the respondents-State.
Shri Anoop Nair- Senior Advocate with Shri Mihir Linawat- Advocate for respondent No. 2.

ORDER

(Reserved on : 23/04/2025)
(Pronounced on : 01/05/2025)

Per: Hon'ble Shri Justice Vivek Jain.

The present petition has been filed challenging the order Annexure P/7 dated 19.10.2015 whereby the petitioner who was working as Additional District and Sessions Judge being member of the M.P. Higher Judicial Services, has been dismissed from service by the Government of M.P. by its Department of Law and Legislative Affairs, based upon the recommendation made by the Full Court of the High Court which in turn endorsed the decision taken by the concerned

Administrative Committee of the High Court. Consequent to order Annexure P/7 the petitioner had preferred an appeal and the said appeal has also been rejected by order dated 02.03.2017 and communicated vide letter dated 17.07.2017.

2. It is the case of the petitioner that he was appointed as Civil Judge Class-II in the year 1987 and upon satisfactory discharge of his duty, was promoted to the post Additional District and Sessions Judge on 12.04.2004. It is further the case of the petitioner that his career was unblemished from initial date of appointment i.e. 1987 till the present matter arose which lead to his ultimate dismissal from service.

3. It has been categorically stated by the petitioner that apart from the present allegation against him leading to his dismissal from service by order Annexure P/7 dated 19.10.2015, there is nothing on record against the petitioner in his entire service career.

4. Learned counsel for the petitioner while projecting the case of the petitioner submits that the charge-sheet was issued to the petitioner vide Annexure P/2 dated 13.03.2014 levelling the charge that on 09.11.2012 in pending Sessions Trial No. 248/2010 (State of M.P. Vs. Hakim and others) with corrupt or oblique motive or for some extraneous consideration the petitioner allowed the bail application of the accused Hakim facing accusation under Sections 302, 120-B and 147 of IPC which was after rejection of his four successive bail applications by the High Court on 09.03.2011, 09.12.2011, 17.02.2012 and 17.09.2012. However, despite the High Court having repeatedly dismissed the bail applications of the same accused, the grant of bail

by the petitioner to said accused person was alleged to be against judicial discipline and propriety and therefore, he was alleged to have failed to maintain absolute integrity and devotion to duty expected of a judicial officer. Therefore, on such allegations, he was visited with the charge sheet.

5. The learned counsel for the petitioner has argued before this Court that the accused Hakim whose bail application has been allowed by the petitioner had earlier filed first bail application before this Court which was dismissed as not pressed on 09.03.2011. However, when second bail application registered as M.Cr.C. No. 7617/2011 was filed, the same was decided by the High Court on 09.12.2011 and in the said order the High Court held that the trial court shall decide the trial within a period of four months and if the trial is not concluded within the said period then the accused would be at liberty to move fresh application before the trial court which shall be considered by the trial court in view of the material available before the trial court. It is argued that indeed subsequent bail applications were also considered by the High Court i.e. third bail application on 17.02.2012 and fourth bail application on 17.09.2012 and bail was not granted by the High Court and further time was given to conclude the trial and lastly vide order dated 17.09.2012 the High Court had granted six months time to conclude the trial. The allegation against the petitioner is that though the High Court has granted six months time to conclude the trial on 17.09.2012 but the petitioner had granted bail to the accused person on 09.11.2012 which amounts to judicial impropriety in as much as once the High Court had rejected the bail applications of the same accused

person or had allowed withdrawal of the bail application of the same accused person as the High Court was not inclined to grant bail to that person, the Sessions Judge ought not to have granted bail to the accused person.

6. Learned counsel for the petitioner submits that the Inquiry Officer in his enquiry report has not found that there has been any corruption or extraneous consideration on the part of the petitioner in allowing the bail application. Rather the Inquiry Officer in the enquiry report Annexure P/4 dated 17.07.2014 has categorically held that no corrupt conduct nor any extraneous consideration or mal-intention has been proved in the Departmental Enquiry in the matter of grant of bail to the accused person but the act of the petitioner amounts to judicial indiscipline because he has failed to maintain Judicial discipline by granting bail to a accused person whose bail applications have been rejected by the high court. Learned counsel for the petitioner vehemently argued that once the high court had itself granted four months time to conclude the trial court vide order dated 09.12.2011 passed in M.Cr.C. No. 7617/2011, and set the trial Court at liberty to consider the bail application if trial is not completed within four months, then the petitioner could have considered the repeat bail application of the same accused person. So far as the subsequent rejection/ withdrawals of the bail application of the same accused person from the High Court is concerned, it was contended by learned counsel for the petitioner that same is not on account of willful act on the part of the petitioner but on account of inadvertence in as much as the effect of subsequent orders of rejection and withdrawal of the bail

applications of the same accused person by the High Court on 17.02.2012 and 17.09.2012 were misconstrued at the time of consideration of bail application by the petitioner on 09.12.2012 and neither the prosecution nor the complainant had pointed out the true effect of the said order to the petitioner. It was a case of oversight and inadvertence in as much as the petitioner did not take into account the true effect of subsequent orders of the High Court while allowing the bail application of the accused person-Hakim. It was further argued that there is nothing on record to indicate that the subsequent to orders dated 17.02.2012 and 17.09.2012 passed by the High Court in subsequent bail applications were indeed sent by the High Court to the file of the Sessions Judge so that the petitioner can be said to have failed to adhere to judicial discipline by granting bail to the accused person. On these grounds it is prayed that the charges against the petitioner are not made out and further that even if the charges are made out then the punishment meted out to the petitioner amounts to shockingly disproportionate punishment in as much as the petitioner was set to superannuate on attaining the age of superannuation in the year 2018 while the impugned dismissal order has been passed in the year 2015 when the petitioner had hardly less than 3 years left for his superannuation and the said dismissal order in the evening of otherwise unblemished career deserves to be set-aside, on merits and in the alternative, on the question of quantum being shockingly disproportionate punishment.

7. *Per contra*, learned counsel for the respondents have vehemently supported the dismissal of the petitioner from judicial service and it is

vehemently argued that the petitioner had failed to maintain Judicial discipline by allowing bail application of accused Hakim in sessions trial though the high Court had been repeatedly rejecting or allowing withdrawal of the bail application of the same accused person despite which the Sessions Judge jumped in between and allowed the bail application which is a blatant act of judicial indiscipline and judicial impropriety which is not expected of a senior judicial officer who is nearing retirement and is holding the post of a senior Additional District and Sessions Judge in Higher Judicial Service. It is further argued that it is duly brought on record in the enquiry report that the subsequent bail rejection orders and bail withdrawal orders of the High Court were placed before the file of Sessions Court by the complainant and the Inquiry Officer has duly recorded the said fact in the enquiry report. Learned counsel for respondents have also referred to the order passed by the High Court in M.Cr.C. No. 1866/2013 whereby the High Court has cancelled the bail granted to accused Hakim by noting that the grant of bail by sub-ordinate court after rejection by the High Court amounts to misuse of power and also noted the judicial indiscipline of the petitioner and had directed copy of the bail cancellation order be sent to District and Sessions Judge of the district concerned for assessing the working of the concerned judge and also to bring the entire matter to the notice of the Portfolio Judge of the District. Therefore, it is argued that the penalty of dismissal given to the petitioner is fully justified because the misconduct of the petitioner is made out and also that the punishment given to the petitioner is not shockingly disproportionate to his misconduct.

8. Heard.

9. In the present case the allegation against the petitioner in the charge sheet was allowing the bail application of accused Hakim with corrupt/ oblige motive or extraneous consideration and further failure to maintain judicial discipline and propriety. So far as the allegation of the petitioner acting with corrupt or oblique motive or for some extraneous consideration is concerned, the said allegations were not sustained in the enquiry itself and Enquiry Officer has categorically held the no corrupt/ oblique motive or extraneous consideration could be established during the course of the enquiry. Therefore, the only issues that remain for consideration is whether the petitioner has failed to maintain judicial discipline and propriety and to what extent and whether it is to such an extent which would warrant dismissal and whether the punishment of dismissal given to the petitioner is shockingly disproportionate, or not.

10. The basic facts of the case are not in dispute. It is duly established from record that the accused Hakim was arrested on 13.04.2010 and his first bail application was dismissed as not pressed on 09.03.2011 in M.Cr.C. No. 8197/2010 by the High Court.

11. The second bail application of the same accused person registered as M.Cr.C. No. 7617/2011 was decided on 09.12.2011 whereby the High Court directed the trial court to decide the trial expeditiously preferably within four months and in the event of non conclusion of trial within four months, set the Sessions Judge at liberty to consider the bail application of the accused on merits. The operative

part of this order dated 09.12.2011 which is the very origin of the entire matter, was as under :-

> *After taking into consideration all the facts and circumstances of the case, petition filed by the petitioner is disposed of with a direction that the learned trial Court shall proceed with the case and shall conclude the trial as expeditiously as possible preferably within a period of 4 months. If the trial is not concluded within a stipulated period then the petitioner shall be at liberty to move fresh application before the Court below which shall be taken into consideration by the Court below keeping in view the evidence which has already been recorded by the Court below.*

12. The third bail application of the same accused person registered as M.Cr.C. No. 774/2012 was decided on 17.02.2012 by the High Court and by the said order the High Court directed the Trial Judge to decide the trial within four months and disposed of the bail application without granting bail.

13. Thereafter, another i.e. fourth bail application was filed by the same accused person registered as M.Cr.C. No. 5650/2012 whereby the High Court directed the Trial court /Sessions court to expedite the trial and conclude it expeditiously preferably within a period of six months.

14. In between an application under Section 482 of Cr.P.C. was filed by the complainant party and the applicant therein was wife of the deceased and prayer was made for modification of the directions given in M.Cr.C. No. 7617/2011 on the ground that conclusion of trial within

four months is not possible. The High Court vide order dated 07.06.2012 disposed of the petition filed by the complainant under Section 482 of Cr.P.C. with a direction that the trial court shall proceed with the case and decide the same as early as possible.

15. From the aforesaid gamut of events happening in successive bail applications/application under Section 482 of Cr.P.C. before the high Court, it is evident that the High Court in M.Cr.C. No. 7617/2011 gave liberty to the Trial judge to consider fresh bail application of the accused if the trial is not concluded within four months. This outer limit of four months stood relaxed in M.Cr.C. No. 4472/2012 which was filed by the complainant of the case but the liberty granted to the trial judge was not withdrawn in specific words.

16. It is also true that subsequently in third and fourth application filed by the same accused person i.e. M.Cr.C. No. 774/2012 decided on 17.02.2012 and M.Cr.C. No. 5650/2012 decided on 17.09.2012, these applications were rejected/ withdrawn before the High Court.It is also not in dispute that the Inquiry Officer has recorded in para 2(i) of enquiry report Annexure P/4 that on 20.07.2012 the orders passed in M.Cr.C. 4472/2012 (petition under Section 482 of Cr.P.C. filed by the complainant) and M.Cr.C. No. 7617/2011 (order in second bail application) are received by the trial court and the said fact is recorded in the order sheet written by the trial court on 20.07.2012. However, as noted by us above, in the petition under Section 482 Cr.P.C. filed by the complainant though the outer time limit had been relaxed by the High Court but the liberty granted to the trial judge to consider the

fresh bail application was not withdrawn in specific terms. Though the subsequent third and fourth bail applications i.e. M.Cr.C. No. 774/2012 and M.Cr.C. No. 5650/2012 were rejected/ withdrawn before the High Court but in the enquiry report there is no clear finding that the said orders were placed in the file of the trial court when the repeat bail application of accused Hakim was decided by the petitioner. The Inquiry Officer has held that in para 2(i) of the enquiry report that the order passed in second bail application granting liberty to the trial judge was placed before the trial court and the order passed in petition under Section 482 filed by the complainant was also placed before the Trial Court. However, the fact remains that the order passed in fourth bail application i.e. M.Cr.C. No. 5650/2012 was duly brought to notice of the Trial Judge while granting bail to the accused person on 09.11.2012.The bail order passed by the petitioner on 09.11.2012 duly mentions that the order passed in M.Cr.C. 5650/2011 dated 17.09.2012 has been placed before the Court. The number was wrongly mentioned as M.Cr.C. 5650/2011 in place of M.Cr.C. No. 5650/2012 but the date and facts are of order passed in M.Cr.C. No. 5650/2012 which relates to the present matter. Therefore, the order passed by the High Court in fourth bail application seems to be duly intimated to the TrialJudge i.e. the petitioner while allowing the bail application of the accused Hakim. In view of the fact recorded in the order dated 09.11.2012 allowing the bail application that on 17.09.2012 the bail application of the same accused person has been dismissed as not pressed before the High Court it cannot be said that the petitioner was not having

knowledge of the subsequent rejection/ withdrawal of the bail application of the same accused person.

17. In the present case though it is apparent from the record that the petitioner had knowledge of subsequent withdrawal/ dismissal of repeat bail application of the accused person from the High Court but the fact remains that the High Court at one point of time while dealing with second bail application had granted liberty to the trial court to decide the bail application of the accused person on merits if trial is not concluded within four months vide order dated 09.12.2011. Infact, the petitioner had allowed the repeat bail application on 09.11.2012 by exercising the said liberty, and mentioned so in the bail order. The repeat bail applications before the High Court had been though dismissed or withdrawn but once a liberty was given over to the Trial Judge at some point of time, then the act of the petitioner in allowing the subsequent bail application of the accused person by exercising the liberty granted by the High Court on 09.12.2011 can only be said to be an error of judgment by the Trial Judge. More so when the Inquiry Officer himself has noted that no ingredients of any corrupt practice or extraneous consideration have been found proved in the enquiry.

18. In ***Krishna Prasad Verma v. State of Bihar, (2019) 10 SCC 640***, the Supreme Court has held that high Court has role as guardian and protector of the district judiciary and misconduct is different from erroneous order. Erroneous order will be part of the service record of the judicial officer but cannot perse be deemed as misconduct unless they are passed for erroneous reasons or illegal gratification etc. In the

said case decided by the Hon'ble Supreme Court, the judicial officer had granted bail despite rejection of the bail application by the High Court and the order being available in his file, but skipped his attention, but had promptly cancelled the bail once the order of the High Court was brought to his notice. The only difference between the said case and the present one before us is that in this case the Trial Judge rejected the application for cancellation for bail too.However, in the present case, the application for cancellation of bail was subsequently rejected by the petitioner. Therefore, this case is a case of error of judgement, and very thinly crossing the line of not maintaining judicial discipline, though the same seems to be under a mistaken belief that the petitioner was still having liberty to consider the repeat bail application in terms of liberty granted while deciding the second bail application by the High Court, which was never expressly withdrawn, but was impliedly withdrawn, by allowing subsequent bail applications filed before it to be rejected/withdrawn as not pressed.

19. In the case of***Abhay Jain v. High Court of Rajasthan, (2022) 13 SCC 1,***the Supreme Court was considering the case of a probationer Judicial Officer who had granted bail to an accused despite rejection by the High Court and the prosecution had failed to bring the fact to notice of the judicial officer concerned. It was held that it may be a case of negligence, but not misconduct, moreso when the bail order was not challenged by the prosecution or any other party. The penalty of discharge was set aside with 50% backwages.

20. In ***K.C. Rajwani v. State of M.P., 2022 SCC OnLine MP 1550*** this court dealt with the case of judicial officer wherein the allegation against the judicial officer were passing erroneous orders who otherwise had a unblemished career and there were no complaints as regard his integrity in performance of duties and he enjoyed very good reputation. There was no doubt in the integrity of the said judicial officer. On these grounds the major penalty granted to the judicial officer concerned was set-aside.

21. In the present case though it is a case of error of judgment and erroneous order passed by the trial judge, but it is also a case very thinly crossing the line of judicial indiscipline which appears to be under a mistaken belief/impression, as noted by us above. Even no extraneous or ulterior motive was proved in the enquiry.

22. In our view though it is a case of granting bail by the Trial Judge despite accused withdrawing his subsequent bail application from the High Court, but it cannot be lost sight by this Court that the High Court itself had been passing contradictory orders because at one point of time liberty was granted to the Trial Judge to consider the bail application of the accused if trial is not concluded in four months and in the same breath subsequent bail application was dismissed/ withdrawn as not pressed by the High Court. It cannot be disputed that the Trial judge should have been careful enough in respecting the order of the High Court and ought not to have granted the bail to the accused person once the subsequent bail applications i.e. third and fourth repeat bail applications were rejected by the High Court and liberty has been

granted in the second bail application by the High Court but once at some point of time there was a liberty granted by the High Court to the Trial Judge then the Trial Judge exercising liberty cannot be said to have conducted a grave misconduct in allowing the bail application of the accused since the trial was being delayed and there is nothing on record to indicate that the petitioner being the Trial Judge had been deliberately delaying the Trial, only to allow the benefit of bail to the accused.

23. It is certainly not a case of any major misconduct and not a case of wilful behavior by the Trial Judge passing orders stubbornly disregarding the order of the High Court. Though the order was erroneous but here was a case where confusions were being created by contradictory orders passed by the High Court in subsequent bail applications. Therefore in our opinion it is a case of erroneous order and only because the petitioner subsequently did not cancel the bail, it cannot be said that the petitioner committed any major misconduct. The only difference between this case and the case of ***Krishna Prasad Verma (supra)*** is that in the present case, the petitioner rejected bail cancellation application also. However, it is not such case which warrants dismissal of the judicial officer from service that too when judicial officer had put in 28 years of service and was due to retire within next two to three years or so, and had an otherwise unblemished career. He had been promoted along with his batch mates and no doubt on his integrity and honesty were cast at any point of time ever and even in the enquiry report of the present case no such doubts have been cast and on the contrary it has been held that no ingredients of

extraneous consideration or of any corrupt practice could be established during the course of enquiry against the petitioner. Therefore, the punishment of dismissal in the present case shocks the conscience of this court because the punishment is shockingly disproportionate.

24. The Supreme Court in the matter of punishment being shockingly disproportionate has considered the scope of jurisdiction in judicial review in the case of ***Delhi Police Through Commissioner of Police and others Vs. Sat Narayan Kaushik (2016) 6 SCC 303*** and ***Union of India and others Vs. Ex. Constable Ram Karan (2022) 1 SCC 373***. In the case of ***Sat Narayan Kaushik (supra)***, it has been held that the High Court can interfere with the quantum of punishment in an appropriate case after considering the totality of the facts and circumstances of the case such as nature of charges levelled against the employee, its gravity, seriousness, whether proved and, if so, to what extent, entire service record, work done in the past, remaining tenure of the delinquent left, etc. In other words, it is necessary for the High Court to take these factors into consideration before interfering in the quantum of the punishment. In the case of ***Ex Constable Ram Karan (supra)***, after considering paragraph-18 of the three-judge Bench judgement in case of ***B.C. Chaturvedi* v. *Union of India*, (1995) 6 SCC 749**, it has been held if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court, it would appropriately mould the relief and to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

25. It is not in dispute that the petitioner is now more than 65 years of age and would have superannuated from service in the year 2018, therefore, it is a fit case to interfere in the quantum of punishment by the Court itself. As the petitioner has already passed the age of superannuation, in our opinion it would not be proper to remand the matter to the Full Court or to the Administrative Committee for reconsideration on the quantum of punishment. In our considered opinion, the interest of justice would be met if the punishment of dismissal is replaced with punishment of withholding two increments without cumulative effect.

26. The petitioner would be entitled to 50% of backwages from the date of termination till the date of superannuation and thereafter shall be entitled to full pensionary benefits as permissible under the law.

27. Let necessary calculation be carried out and payment be released to the petitioner within a period of two months from the date of production of certified copy of this order.

28. Accordingly, petition stands **allowed** in the above terms**.**

(SURESH KUMAR KAIT)
CHIF JUSTICE

(VIVEK JAIN)
JUDGE

MISHRA