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**(1991) 05 MP CK 0008**

**Madhya Pradesh High Court**

**Case No:** Criminal Rev. No. 179 of 1991

Jaishree Belbanshi

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

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Date of Decision: May 1, 1991

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 209, 437, 437(1)

Citation: (1991) 36 MPLJ 771 : (1991) MPLJ 771

Hon'ble Judges: K.L. Issrani, J

Bench: Single Bench

Advocate: H.S. Dubey, for the Appellant; Lal S. Singh, Government Advocate, for the Respondent

Final Decision: Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

K.L. Issrani, J.

This revision is directed against the order dated 18-4-1991, passed by the Second Additional Sessions Judge, Chhindwara, in Criminal Revision No. 21 of 1991 setting aside the bail order dated 28-2-1991, passed by the Chief Judicial Magistrate, Chhindwara u/s 437 of the Code of Criminal Procedure.

The police station, Parasia has registered an offence Under Sections 317/318/302 of the Indian Penal Code in Crime No. 105/90 against the applicant on the allegation that dead body of one illegitimate child was found by the Parasia Police Station in district Chhindwara on 2-3-1990, which offence is alleged to have been committed by the applicant.

In the earlier investigation, nothing was found against the applicant. It was only on or about, in the month of December, 1990, that the police has registered this offence against the applicant. The applicant filed a bail application u/s 438, Criminal

Procedure Code before the Sessions Court but that application was rejected.

Thereafter, the applicant surrendered herself before the Chief Judicial Magistrate, Chhindwara, on 26-2-1991. The case was ordered to be listed on 27-2-1991. On this date, the applicant was taken into judicial custody. Notice to this effect was ordered to be issued to the Town Inspector, Parasia Police and the applicant was ordered to be produced before the Court on 9-3-1991. Later on, at 3.30 P.M. on the same day i.e. on 27-2-1991, an application u/s 437(2), Criminal Procedure Code was moved on behalf of the applicant by her counsel, copy of which was supplied to the concerned A.P.P. The case was ordered to be listed for arguments along with case diary on 28-2-1991. On this date, after hearing the parties and on perusal of the case diary, the learned Chief Judicial Magistrate, after passing a detailed order, had ordered the applicant to be released on his furnishing a solvent surety in the sum of Rs. 10,000/- (Rs. ten thousand) along with personal bond in the like amount. However, the non-applicant State preferred a revision against the said order before the Sessions Court, Chhindwara, which was allotted to the Court of Second Additional Sessions Judge, Chhindwara, who, by the impugned order, has set aside the order passed by the Chief Judicial Magistrate on the ground that the Chief Judicial Magistrate had no jurisdiction to pass such an order u/s 437, Criminal Procedure Code.

The argument of the learned counsel for the applicant is that under the first proviso to Sub-section (1) of Section 437, Criminal Procedure Code, the Chief Judicial Magistrate, who is the committing authority, has ample power to enlarge the applicant on bail, she being woman falling within that category. According to the learned counsel, bail bonds and surety bonds have already been furnished. She is a lady and there is no likelihood of her absconding. The investigation is also over.

The learned Government Advocate appearing on behalf of the non-applicant State has opposed the submissions of the learned counsel for the applicant and supported the order passed by the lower revisional Court.

Having heard the arguments advanced on behalf of the parties on either side, this Court is of the opinion that this revision petition deserves to be allowed. The reasoning given by the learned Additional Sessions Judge was in para 13 of his judgment that the applicant's being a woman is no ground to release her on bail. I fail to understand the reasonings of the learned Additional Sessions Judge that being a woman is no ground to release her on bail. The learned Additional Sessions Judge has failed to look into the first proviso to Section 437, Criminal Procedure Code which reads as under:

"Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm :"

(The word "woman" is emphasised by me.)

The applicant being a woman certainly falls within the category of persons categorised under the first proviso to Section 437(1). No further specification or detailed order is required to be passed giving a finding on the point whether or not the applicant being a woman is entitled to the benefits under this proviso.

The other reasoning that no reasons are given by the learned Chief Judicial Magistrate for releasing the applicant on bail, is also not correct. The learned trial Magistrate in his order has written that the post mortem report on the dead body of the newly born child was performed on 2-3-1990 and that it is strange to note how the authorship can be attached with the accused and that too in a heinous offence punishable u/s 302 of the Indian Penal Code; however, the present state of affairs of the so-called investigation is that the Parasia Police has registered an offence. No doubt, no further detailed reasons are given by the trial Magistrate, as though by the learned Additional Sessions Judge. But, the fact remains that the incident is of 2-3-1990. Earlier nothing was found against the applicant nor was she medically examined and the case was registered only in the month of December, 1990. The trial may also take time. In the similar circumstances, it has been held in [Mt. Choki Vs. The State](#), that the provision of Section 497, Criminal Procedure Code (old), which gives a special treatment to the cases of the children and women, is not inconsistent with the provisions of Article 15 of the Constitution of India; and it is open to a Court to grant bail, to a woman even in cases where she is accused of an offence which is punishable with death or transportation for life, u/s 497, Criminal Procedure Code.

Therefore, it cannot be said that the Chief Judicial Magistrate, who is also the committing Court, had no jurisdiction to grant bail to the applicant u/s 437 (new), Criminal Procedure Code. This Court, in *Lila Bai v. State of M. P.* 1971 J LJ 51, has held that even after conviction u/s 302, Indian Penal Code the applicant who is a woman (in that case the applicant Lila Bai, who was convicted u/s 302, Indian Penal Code for murdering her step-son by poisoning him) was allowed to continue on bail during the period of appeal.

The Supreme Court in [Bhagirathsinh Judeja Vs. State of Gujarat](#), has held that it is now well-settled by a catena of decisions of the Supreme Court that the power to grant bail is not to be exercised as if the punishment in trial is being imposed. It has further been held that even where a prima facie case is established, the approach of the Court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence.

Nothing of the kind has been alleged in this case. Even if bail is granted by High Court, it is the Court of Chief Judicial Magistrate or the committing Court where the bail bonds are required to be furnished. I see no reason to cancel the bail bonds and personal bonds furnished by the applicant before the Chief Judicial Magistrate, Chhindwara. She is allowed to continue on bail till the trial before the Sessions Court

is over.

In view of above observations, the revision is allowed. The order passed by the Additional Sessions Judge, Chhindwara, is quashed and that of the Chief Judicial Magistrate, Chhindwara is restored.