

ITEM NO.101

COURT NO.6

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1944/2011

BANSHI

Appellant(s)

VERSUS

THE STATE OF MADHYA PRADESH

Respondent(s)

([FOR PHYSICAL HEARING])

Date : 17-02-2022 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE M.M. SUNDRESH

For Appellant(s) Mr. Sushil Kumar Jain, Sr. Adv.
Mr. Puneet Jain, Adv.
Ms. Christi Jain, Adv.
Mr. Umang Mehta, Adv.
Ms. Shruti Singh, Adv.
Ms. Pratibha Jain, AOR

For Respondent(s) Mr. Gopal Jha, AOR
Mr. Mukesh Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Learned counsel for the appellant at the very inception seeks to rely on Rule 363 of the M.P. Prison Rules, 1968 to advance a proposition that since the appellant is visually impaired to the extent of suffering permanently from 100% blindness (that is the reason given in the order dated 18.10.2011 to grant him bail) and that is not a result of any voluntary act of the prisoner, the section would come to the aid of the appellant for consideration of his case. Rule 363 reads as

under :

"363 (1). Where the Medical Officer of the prison is of the opinion that the convicted prisoner has gone completely and incurably blind not as a result of any voluntary act of the prisoner or that a convict prisoner has become completely decrepit or has become disabled on account of incurable physical infirmity which incapacitated him from the commission of further crime on his release and as such where the release of such a prisoner is not likely to be attended with mischief or danger, he shall report the case of the prisoner to the Superintendent.

(2) On receipt of such a report the Superintendent shall request the District Medical Officer for constitution of the District Medical Board before whom the case of the prisoner will be placed for a certificate to the effect that the prisoner has gone absolutely and incurably blind or that he has been so completely physically incapacitated that he is incapable of committing any crime on his release and his release is not likely to be attended with any mischief and danger.

3) On receipt of the report of the Medical Board the Superintendent shall refer the case to the District Magistrate of the District in which the prisoner's offence was committed stating all the facts and obtaining his opinion. After the receipt of the District Magistrate's opinion the Superintendent shall forward the case to Inspector General who shall submit it for Government's order in case the report of the Medical Officer is corroborated by the Medical Board and the release of the prisoner is recommended. In all

cases the papers would be filed by him."

On our query to the learned counsel for the appellant whether this Rule would be equally applicable to life sentence cases, and whether there is any judicial precedent in this behalf, learned counsel for the appellant expresses his ignorance and waived it towards the respondent.

On the learned counsel for the respondent being queried on this aspect, he wants to take us to the merits of the matter without answering this question.

We put to learned counsel for the respondent that he has filed a written synopsis and having perused the synopsis of the appellant, has he answered this plea in his synopsis, the answer is in the negative.

We say nothing more but we are pained with the assistance being rendered!

Learned counsel for the respondent to obtain requisite instructions looking to the legal position and assist us on the next date as to whether the appellant's case is liable to be considered under Rule 363 as aforesaid.

We expect the learned counsel for the appellant also to do some ground work to find out

whether there are any illustrative judicial precedents in this behalf in the context of life sentence cases.

List as part-heard in the week commencing 02.03.2022.

[CHARANJEET KAUR]
ASTT. REGISTRAR-cum-PS

[POONAM VAID]
COURT MASTER (NSH)