

MCRC-21646-2016

(AVINASH KUMAR MISHRA Vs THE STATE OF MADHYA PRADESH)

31-01-2017

Shri Manish Datt, learned senior counsel with Shri Chetan Jaggi, learned counsel for the applicant.

Shri Y.D. Yadav, learned Panel Lawyer for the respondent-State.

Heard arguments.

Perused case diary and material on record.

This is the second bail application filed by the applicant under Section 438 of the Cr.P.C. for grant of anticipatory bail as he apprehends his arrest in Crime No.432/2016 registered at Police Station Umaria against him and other co-accused persons for the offences punishable under Sections 419 and 420 of the IPC and 3-A r.w. 4 of the Madhya Pradesh Recognised Examinations Act, 1937 (for short "the Act").

Let it be noted that the applicant's first anticipatory bail application was dismissed as withdrawn.

According to the prosecution, complainant C.B. Sodha, the Principal of the R.V.P.S. Government College Umaria (for short "the College"), has lodged a written FIR on 27.8.2016 stating that the Awadhesh Pratap Singh University Rewa has set up an examination centre in the College. On 27.8.2016, there was a written examination of subject X-ray/Radiology (for short "the examination") in which 16 examinees were to write the examination. Upon the checking of the admit cards of all the 16 examinees before the beginning of the examination, the Invigilators found that out of the 16 real examinees, six impersonators also came to take examination on behalf of the real examinees. The specific allegation against the applicant is that he arranged the impersonators.

Learned senior counsel for the applicant submits that the applicant is a

permanent resident of Shahdol district and that he has been falsely implicated in the case because he is neither the beneficiary nor the impersonator. He submits that the applicant is 20 years of age and that if he is arrested in the case, then his future life will be badly impacted. He submits that this is the first ever criminal case registered against the applicant and that he has no criminal antecedents. He submits that the maximum imprisonments in Sections 419 and 420 IPC are 3 and 7 years respectively and that the offences under Sections 3-A r.w. 4 of the Act are bailable. Hence, the law laid down in the case of Arnesh Kumar vs. State of Bihar and another (2014 AIR SCW 3930) is squarely applicable in the present case. He submits that looking to the allegations levelled against the applicant, his custodial interrogations are also not required. Upon these submissions, he prays for grant of anticipatory bail to the applicant.

Learned Panel Lawyer opposes the prayer on the grounds that as per the FIR, six impersonators came to write the examination. This fact shows that a gang is operating who is making available the impersonators for the real examinees on money and that there is evidence to the effect that the applicant has connection with the said gang. Under the circumstance, the custodial interrogations of the applicant may be required. He submits that in recent years there is a surge of impersonators who appear in the examinations on behalf of real examinees. Therefore, the courts are required to take strict action to curb the menace.

Considering the facts and circumstances of the case and the submissions advanced on behalf of the parties by their counsel, but without expressing any opinion on merits of the case, the investigating officer of the case is directed to observe strictly the guidelines laid down by the Supreme Court in the case of Arnesh Kumar vs. State of

Bihar (supra) with regard to the provisions of Sections 41 and 41(A) Cr.P.C. pertaining to the arrest on an accused. The arrest of the applicant be effected only when his custodial interrogations are necessary. Further before arresting the applicant, he would mention in the case dairy all the reasons that necessitate him his arrest. With these observations, the application stands disposed of. Certified copy as per rules.

(RAJENDRA MAHAJAN)
JUDGE

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