

HIGH COURT OF MADHYA PRADESH,
BENCH AT GWALIOR
M.Cr.C. No.37627/2021
(Jandel Singh Vs. The State of M.P.)
(1)

Gwalior, dated : 31/07/2021

Shri Rajiv Sharma, Advocate for the applicant.

Shri P.P.S.Bajeeta, G.A. for the respondent/State.

Heard through Video Conferencing.

I.A. No.22387/2021, an application for urgent hearing is allowed.

Case diary perused.

Heard, learned counsel for the parties.

This is first application under section 438 of the Cr.P.C. for grant of anticipatory bail.

Applicant apprehends arrest in connection with Crime No.311/2020 registered at Police Station Umri, District Bhind for the offences punishable under Sections 379 and 414 of the IPC.

Allegations against the applicant, in short, are that he was involved in illegal transportation of Sand through his Tractor.

Learned counsel for the applicant submits that applicant, who is 73 years old, has been falsely implicated in the matter. The applicant was not present at the place of incident. In fact he had already rented out the Tractor 2-3 months back and there is an agreement to that effect. He is a retired teacher and if arrested his reputation in the society would get spoiled. Attention has also been invited to the guidelines issued to all the States and Union Territories

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by the Apex Court for de-congesting the prisons in suo motu W.P. (C) No. 1/2020 (IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS), as well as, W.P. No. 9320/2021 (In refernce (suo motu) Vs. State of M.P. And others) to consider release of prisoners who have been convicted or are under trial for offences for which prescribed punishment is up to 7 years or less by constituting a High Powered Committee. He further submits that the conditions as stipulated in section 41 of the Cr.P.C. are not satisfied in the instant case, and, as such, the applicant should not be taken into custody. For this he has placed reliance on the decision of the Apex Court in the case of *Arnesh Kumar Vs. State of Bihar* (2014 CrLR (SC) 721). There are no chances of his absconding or tampering with the prosecution evidence. He shall abide by the terms and conditions as may be imposed by this Court. With the aforesaid submissions, prayer for grant of anticipatory bail is made.

Learned counsel for the State counsel opposed the application by contending that on the basis of the allegations and the material available on record, no case for grant of anticipatory bail is made out.

However, in the case of *Arnesh Kumar Vs. State of Bihar* ((2014) 8 SCC 273), it has been directed by the Apex Court that in offences involving punishment up to seven years' imprisonment the police may resort to the extreme step of arrest only when the same is

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necessary and the applicant does not cooperate in the investigation.

The applicant should first be summoned to cooperate in the investigation. If the applicant cooperates in the investigation, then the occasion of his arrest should not arise. For ready reference and convenience, the guidelines laid down by the Supreme Court in the case of Arnesh Kumar (Supra) are enumerated below:-

- 7.1. From a plain reading of the provision u/S.41 Cr.P.C., it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.
- 7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.
- 7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. Before arrest first the police officers should have reason to believe on the basis of

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information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub clauses (a) to (e) of clause (1) of Section 41 Cr.P.C.

9. Another provision i.e. Section 41-A Cr.P.C. aimed to avoid unnecessary arrest or threat of arrest looming large on the accused requires to be vitalized. This provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) Cr.P.C., the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 Cr.P.C. has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

In view of above and considering the principles laid down by the Apex Court in the case of **Arnesh Kumar (Supra)**, this Court is inclined to direct thus:

- (i) That, the police may resort to the extreme step of arrest only when the same is necessary and the applicant fails to cooperate in the investigation.
- (ii) That, the applicant should first be summoned to cooperate in the investigation. If the applicant cooperates in the investigation, then the occasion of his arrest should not arise.

The applicant shall furnish a written undertaking before the

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SHO concerned that he will abide by the terms and conditions of various circulars, as well as, orders issued by the Central Government, State Government and local administration from time to time such as maintaining social distancing, physical distancing, hygiene etc. to avoid proliferation of Corona virus.


With the aforesaid directions, the present anticipatory bail application stands disposed of.

Learned counsel for the State is directed to send an e-copy of this order to the Station House Officer of the concerned Police Station for information and necessary action.

Certified copy/e-copy as per rules/directions.

(S.A.Dharmadhikari)
Judge

(and)

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