

Sunil Dhakad And Others Vs State Of Madhya Pradesh And Others

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: Jan. 12, 2021

Acts Referred: Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 " Section 3(1)(R), 3(1)(S), 3(2)(VA) 14A

Code Of Criminal Procedure, 1973 " Section 41, 41A, 41(1), 41(1)(e), 438

Indian Penal Code, 1860 " Section 34, 294, 323, 506

Hon'ble Judges: Rajeev Kumar Shrivastava, J

Bench: Single Bench

Advocate: Ashish Singh Jadoun, Ravindra Singh Kushwah

Final Decision: Disposed Of

Judgement

Rajeev Kumar Shrivastava, J

I.A. No.899/2021, an application for urgent hearing is taken up, considered and allowed for the reasons mentioned therein.

Present appeal has been filed under Section 14-A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the order

dated 26.12.2020 passed by Special Judge (Atrocities), District Guna, whereby the application of the appellants under Section 438 of Cr.P.C. seeking

anticipatory bail has been rejected.

Appellants are apprehending their arrest for the alleged offences registered at Crime No.416/2020 at Police Station Myana, District Guna for the

offence punishable under Sections 323, 294, 506, 34 of IPC and Sections 3 (1)(R), 3(1)(S) and section 3(2)(VA) of the Scheduled Castes and

Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the SC & ST Act").

Learned counsel for the appellants submits that appellants have not committed any offence. They have been falsely implicated. Learned counsel for

the appellants further submits that there is no prima facie case made against the present appellants. Hence, prayed to grant benefit of anticipatory bail

to the appellants or directions be CRA 4936/2020 issued in the light of the decision rendered by the Hon'ble Apex Court in the case of Arnesh Kumar

Vs. State of Bihar:[(2014) 8 SCC 273].

Learned Dy. Advocate General for the respondent/State opposed the prayer and has submitted that the offence is registered under Sections 323, 294,

506, 34 of IPC and Sections 3 (1)(R), 3(1)(S) and section 3(2)(VA) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,

1989 (for short "the SC & ST Act"). The offence committed by the appellants is serious in nature. Hence, prayed for rejection of this criminal

appeal.

Heard learned counsel for the parties at length through VC and considered the arguments advanced by them and perused the record.

The Hon'ble Supreme Court in the case of Arnesh Kumar (supra) has directed that in offences involving punishment upto seven years imprisonment

the police may resort to the extreme step of arrest only when the same is necessary and the petitioner does not cooperate in the investigation. The

petitioner should first be summoned to cooperate in the investigation. If the petitioner 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 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

vitalised. 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 CRA4936/2020

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, present appeal is disposed of in the light of law laid down by Hon'ble Apex Court in the case of Arnesh Kumar (supra).

Prosecution is hereby directed to comply with the direction issued by the Hon'ble Apex Court in Arnesh Kumar (supra) in its letter & spirit.

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