
(2022) 02 MP CK 0029

Madhya Pradesh High Court (Gwalior Bench)

Case No: Miscellaneous Criminal Case No.5813 Of 2022

Rajveer Baghel

APPELLANT

Vs

State Of Madhya
Pradesh

RESPONDENT

Date of Decision: Feb. 3, 2022

Acts Referred:

- Indian Penal Code, 1860 - Section 272, 273, 420
- Code Of Criminal Procedure, 1973 - Section 41, 41A, 41(1), 41(1)(a), 41(1)(b), 41(1)(c), 41(1)(d), 41(1)(e), 438

Hon'ble Judges: Deepak Kumar Agarwal, J

Bench: Single Bench

Advocate: Sanjay Kumar Bahirani, Koushlendra Singh Tomar

Final Decision: Allowed

Judgement

Deepak Kumar Agarwal, J

The applicant has filed this first application u/S.438 Cr.P.C. for grant of anticipatory bail as he has apprehension of his arrest in connection with Crime

No.42/2022 registered at Police Station Jaura, District Morena for the offences punishable under Sections 420, 272 & 273 of IPC.

Learned counsel for the applicant submits that the applicant has been falsely implicated in the matter. He has not committed any offence in any

manner. He is ready to abide by all the terms and conditions which may be imposed by this court while considering the application for grant of

anticipatory bail. Counsel for the applicant prays that the application may be allowed in terms of Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273.

Per contra, Counsel for the State has opposed the application and prayed for rejection.

However, looking to the fact that since the offence in question attracts punishment less than 7 years and therefore, in view of the principles laid down

by the Supreme Court in the case of Arnesh Kumar (Supra), it is 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 applicant do not cooperate in the investigation. The applicant

should first be summoned to cooperate in the investigation. If the applicant cooperate 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 subclauses (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 allow the

application and direct thus :

(i) That, the police may resort to the extreme step of arrest only when the same is necessary and the applicants fail to cooperate in the

investigation.

(ii) That, the applicants should first be summoned to cooperate in the investigation. If the applicants cooperate in the investigation then the

occasion of their arrest should not arise.

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

Copy of this order be sent to the trial Court concerned for compliance.

CC as per rules.