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## Ankit Dubey Vs State Of Madhya Pradesh

### Miscellaneous Criminal Case No. 46524 Of 2023

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**Court:** Madhya Pradesh High Court (Gwalior Bench)

**Date of Decision:** Oct. 16, 2023

**Acts Referred:**

Code Of Criminal Procedure, 1973 " Section 41, 41(1), 41(1)(b)(ii), 437, 438#Indian Penal Code, 1860 " Section 147, 148, 294, 323, 324, 336, 452, 458, 506

**Hon'ble Judges:** Satyendra Kumar Singh, J

**Bench:** Single Bench

**Advocate:** Ravi Bhargava, Rajeev Upadhyay

**Final Decision:** Disposed Of

### Judgement

Satyendra Kumar Singh, J

1. Case Diary is available.

2. This first application under Section 438 of CrPC has been filed for grant of anticipatory bail to the applicant, who apprehends his arrest in

connection with Crime No.07/2023 registered at Police Station Lahar, District Bhind (MP) for the offence punishable under Sections 323, 294, 452,

506, 147, 148, 336, 324, 458 of IPC.

3. Prosecution case, in brief, is that on 08.01.2023 at about 19:30 to 20:00 hours, applicant and co-accused persons started abusing complainant Ashok

and when he objected and went to inside his house, applicant and co-accused persons armed with deadly weapons, i.e., axe, farsi and wooden stick

entered into his house, assaulted him with axe farsi and wooden stick and caused grievous injuries to him.

4. Learned counsel for the applicant submits that as per prosecution case itself, injuries said to be caused by the applicant and co-accused persons to

the complainant are simple in nature. It is alleged against the applicant that he was armed with wooden stick and assaulted the complainant by wooden

stick. It has nowhere alleged that the applicant and co-accused persons committed lurking house trespass, therefore, offence punishable under Section

458 of IPC is not made out against the applicant. As all the offences are not punishable more than seven years of imprisonment, applicant's custodial

interrogation is not required. Other co-accused persons, namely, Narendra, Rajendra and Mevalal have already been enlarged on bail by the Trial

Court. Under these circumstances, the applicant may be granted anticipatory bail.

5. Learned counsel for the respondent/State has opposed the prayer and submits that applicant and co-accused persons armed with deadly weapons,

entered into the house of the complainant and assaulted him. Requirement of applicant's custodial interrogation cannot be denied, therefore, he is not

entitled for grant of anticipatory bail.

6. Heard learned counsel for the parties.

7. Having considered the rival submissions, material pointed out by the learned counsel for the applicant with regard to ingredients of offence

punishable under Section 458 of IPC, so also nature of allegations alleged against the applicant and except offence punishable under Section 458 of

IPC, rest all the offences are not punishable more than seven years of imprisonment, therefore, considering the over all material produced on record,

although the applicant applicant is not entitled for anticipatory bail, but looking to the fact that the offence involved in the case are not punishable with

more than 7 years of imprisonment and Section 41(1) of Cr.P.C. provides that the offences for which punishment prescribed is imprisonment for a

term upto seven years, the accused may be kept in custody only if the condition enumerated under Section 41(1)(b)(ii) of Cr.P.C. exists. In the case

of Arnesh Kumar vs. State of Bihar & another [(2014) 8 SCC 273], the Apex Court has held as under:-

.....the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorize

his further detention and release the accused.....".

8. Therefore, in view of the observations laid down in the judgement referred above, I deem it fit to direct as under :-

(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.

(iii) That, if the applicant is arrested and he wants to file application under Section 437 of Cr.P.C. for regular bail before lower Court, then he will be

produced before the lower Court without any delay.

9. Lower Court is also directed to consider his bail application as expeditiously as possible, preferably, on the same day.

10. This application is disposed of with the aforesaid directions.

Certified copy, as per rules.