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**(2014) 05 MP CK 0215**

**Madhya Pradesh High Court**

**Case No:** M.Cr.C. Nos. 4005, 4009 and 4010/2014

Rakesh Gurjar

APPELLANT

Vs

The State Of Madhya  
Pradesh

RESPONDENT

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**Date of Decision:** May 12, 2014

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 163, 41, 438, 46
- Penal Code, 1860 (IPC) - Section 195-A, 319, 330

**Citation:** (2014) 3 MPHT 251

**Hon'ble Judges:** A.M. Khanwilkar, C.J; Ajit Singh, J

**Bench:** Division Bench

**Advocate:** Amitabha Gupta, Advocate for the Appellant; P.K. Kaurav, Additional Advocate General, Advocate for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

1. Heard counsel for the parties.

2. These anticipatory bail applications u/s 438 of the Code of Criminal Procedure (in short "the Code") have been filed by the applicants, namely, Rakesh Gurjar, Sanjay Malviya and Dhiraj Singh Baghel, in connection with Crime No. 18/2013, registered with STF Police Station.

3. The applicants first approached the Sessions Court for the same relief, who in terms of order dated 6th March, 2014, rejected each of the applications, for the following reasons :

4. Counsel for the applicants invited our attention to the provisions of Section 163 and then to Section 41, in particular, clause (ii) (b) of the Code, as inserted by Amendment

Act No. 5 of 2009, and Section 46 of the Code to contend that the Police Officer can arrest a person only on fulfilling the requirements specified by the Amending Act. Further, the arrest cannot be for the purpose of extracting admission/confession or compelling the accused to give false evidence whilst in police custody by force or under coercion. That act of the police would result in the commission of offences under Sections 195-A, 319 and 330 of IPC. Necessarily, therefore, when the applicants are more than willing to participate in the investigation, it is but appropriate that the applicants should be granted anticipatory bail. Reliance is also placed on the decision of the Apex Court in the case of [Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others](#), thereof, in particular.

5. We have given our anxious consideration to the argument canvassed on behalf of the applicants. The requirement of complying with the conditions specified in amended Section 41 of the Code will arise only at the time of arrest of the applicants. The fact that the applicants are likely to be arrested by itself cannot be the basis to grant anticipatory bail. It is well established position that the anticipatory bail cannot be granted as a matter of course.

6. We had occasion to deal with this similar argument while considering M.Cr.C. No. 4586/2014, and including the decision of the Apex Court, pressed into service by the counsel for the applicants, in the case of Siddharam Satlingappa Mhetre (supra). The Apex Court in the case of [State Rep. by the C.B.I. Vs. Anil Sharma](#), , in paragraph 6 has observed thus :

We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favorable order u/s 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful information"s and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

7. The question is : whether in the fact situation of the present case, the Investigating Agency intends to arrest the applicants with ulterior purpose? There is no material forthcoming to indicate that the police is likely to arrest the applicants for that purpose. That plea cannot be considered on the basis of mere apprehension. On the other hand, the Sessions Court has dealt with the material which dissuade us to grant anticipatory bail in the fact situation of the present case. The applicants took help of racketeers-to be

precise -Bharat Mishra. The said Bharat Mishra is absconding. It is indisputable that the applicants, after the selection process was complete, were appointed as Constables. But, after registration of Crime No. 18/20013, each of them have not reported to duty since 23/11/2013. It is also noticed that the applicants had made payments to the racketeers for securing employment on the post of Constable. It is also noticed that the applicants are not available at their last known addresses as were furnished while seeking employment. The argument of the applicants that they are willing to cooperate for the purpose of investigation, therefore, does not commend to us. If the applicants wanted to cooperate in the investigation, they should have appeared in the Office of the Investigating Officer on their own or, at least, when called upon to do so. No explanation is forthcoming as to why the applicants are not available at their last known addresses provided by them while securing employment on the post of Constable.

8. In our opinion, since the crime in question is a complex one and considering the enormity of the crime involving large scale conspiracy hatched to resort to unfair means during the examination conducted by Vyapam, coupled with the fact that there is prima facie material available on record to indicate the involvement of each of the applicants in the commission of the offence in the shape of entries in the Excel Sheet, it is the bounden duty of the Investigating Officer to explore all those aspects and take the investigation to its logical end. Indubitably, there can be no direct evidence about conspiracy. The Investigating Officer, therefore, will have to examine all aspects of the matter including the role of each of the accused party to the conspiracy.

9. Suffice it to observe that for the reasons recorded hitherto and in the decision dated 3rd April, 2014 (M.Cr.C. No. 4586/2014), as also taking over all view of the matter, it is not a case for grant of anticipatory bail.

10. All the anticipatory bail applications are dismissed.