
(2019) 11 MP CK 0260

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 49544 Of 2019

Afroz Khan

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 30-11-2019

Acts Referred:

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), 41(1)(4), 102, 438
Indian Penal Code, 1860 — Section 379

Citation : (2019) 11 MP CK 0260

Hon'ble Judges : Sheel Nagu, J

Bench : Single Bench

Advocate : D.R. Sharma, Anuradha Singh

Final Decision : Disposed Of

Judgement

This is first application u/S. 438 Cr.P.C. for grant of anticipatory bail by the petitioner.

Petitioner apprehends arrest in connection with offences punishable u/Ss. 41(1-4), 102 Cr.P.C., r/w Sec. 379 IPC registered as Crime No. 2/19 by Police Station Madhav Ganj, District Gwalior (M.P.).

Learned Public Prosecutor for the State opposed the application and prayed for its rejection 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.

Petitioner apprehends arrest in respect of the aforesaid offences where allegation of theft is made against him in relation to 2 vehicles (Innova car) which are said to have been stolen.

Custodial interrogation in the matter assumes relevance and therefore looking to the gravity of the offence, this court does not see any ground to allow the present bail application.

Consequently, no case is made out for grant of anticipatory bail. However, looking to the fact that Sec. 379 IPC does not prescribe sentence of more than 7 years, therefore in view of the principles laid down by the Supreme Court in the case of Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273, 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 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 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 the above the present petition stands disposed of with following directions:-

(i) that, the police may resort to the extreme step of arrest only when the same is necessary and the petitioner fails to cooperate in the investigation.

(ii) that, 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.

(iii) The petitioner shall plant 25 saplings of indigenous fruit bearing or shady trees on the side of the road/street of the place of residence of petitioner or at any other place in the district which is earmarked by the Collector/Revenue Authority for planting trees and shall take care of the trees for the next one year by watering the plants and by installing tree guards at his own expenses. In case the petitioner is unable to afford incurring of such expenses, then he would obtain saplings/tree guard from the forest authorities (the concerned Forest Range Officer of the area) free of cost or at concessional/nominal rates available under any beneficial scheme of the Government. The petitioner shall file an affidavit disclosing compliance of this condition within 30 days in the Registry, failing which this court may consider cancellation of bail.

(iv) On complying with Condition No.(iii) aforesaid, the petitioner is directed to inform the location of plantation made to the Forest Rang Officer of the area concerned who will pass on this information to the DFO concerned.

For effective implementation of this order in the interest of betterment of ecology of the area concerned, the District Magistrate of district within which the petitioner resides is directed to assist the petitioner/accused to comply with condition No.(iii) by extending all possible financial and material assistance to the petitioner admissible under any of the beneficial scheme for afforestation of the State.

The DFO of the concerned District is directed to file verification report before the trial Court concerned after carrying out inspection personally or through any other officer of the Forest Dept duly authorized in that behalf disclosing as to whether petitioner has complied with condition No. (iii) or not, and if yes to what extent?

The learned trial Judge on receiving report of noncompliance of condition No.(iii) shall forthwith communicate the same to the Registry of this Court.

The Registry on receiving any such report from the trial Court disclosing default shall put up the matter before appropriate Bench in shape of PUD.

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

Let a typed copy of this order be also supplied to the counsel for the State for compliance of the aforesaid directives.

A copy of this order be furnished by the Registry of this court to the concerned District Magistrate and the DFO having territorial jurisdiction over the place of residence of the petitioner for execution of the order in the interest of the ecology.

It is made clear that if the petitioner fails to cooperate in the investigation, the present order shall become ineffective.

For the time being this case stands disposed of.

A copy of this order be sent to the trial court for necessary compliance.

C.c.as per rules.