
(2021) 07 MP CK 0074

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No.33799 Of 2021

Babulal Yadav And Others

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 09-07-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 41, 437, 438, 438(2), 439
Indian Penal Code, 1860 — Section 34, 294, 323, 498A, 506B
Dowry Prohibition Act, 1961 — Section 3, 4

Citation : (2021) 07 MP CK 0074

Hon'ble Judges : Rajendra Kumar Srivastava, J

Bench : Single Bench

Advocate : Anoop Kumar Saxena, Brajendra Kushwaha

Final Decision : Disposed Of

Judgement

Rajendra Kumar Srivastava, J

This first bail application under Section 438 of Cr.P.C. has been filed by the petitioners for grant of anticipatory bail.

The petitioners are apprehending their arrest in connection with Crime No.329/2021 registered at Police Station-Nowgaon, Distt.-Chhatarpur, (M.P.)

for offence punishable under Sections 498-A, 294, 323, 506-B, 34 of IPC and Section 3/4 of Dowry Prohibition Act.

As per prosecution case, complainant Rajni Yadav lodged the report on dated 25.06.2021. It is alleged by her that her marriage was solemnized with

petitioner-accused No.3 seven years ago. Thereafter, she was residing at her matrimonial home but petitioners-accused demanded rupees one lakh

from her and due to non-fulfillment of dowry, they humiliated and tortured her. One panchayat was also conducted in this regard but petitioners-

accused told her that she will took rupees one lakh from her parents. Thereafter, petitioners-accused beat her and thrown her out from matrimonial house on dated 23.05.2019.

Learned counsel for the petitioners submits that the petitioner-accused Nos. 1 & 2 are respectively father-in-law and mother-in-law of the complainant. They did not torture and humiliate the complainant. They did not demand any dowry. There is general allegation against them.

Complainant was residing separately since 2019 from the petitioner-accused Nos. 1 & 2. It is matrimonial dispute. There is possibility of mutual

settlement. Due to COVID-19 pandemic, there is every possibility of being infected. So, social distancing is very necessary. No custodial interrogation

is required in this case. There is no chance of absconding of petitioners or their tampering with the prosecution evidence. Therefore, learned counsel

for the petitioners prays for grant of anticipatory bail to the petitioners. He further submits that all the allegations leveled against them are false and

fictitious and if the petitioners are arrested, it would adversely affect them both mentally and psychologically. He also relied on the judgment of

Hon'ble the Apex Court in the case of Arnesh Kumar Vs. State of Bihar reported in (2014) 8 SCC 273.

On the other hand, learned Panel Lawyer for the respondent/State opposes the said application.

Heard both the parties and perused the case diary.

O n perusal of case diary, it appears that prima facie evidence is available against the petitioner-accused No.3 and allegations are specific therefore,

prosecutrix lodged the report against the this petitioner and petitioner Nos. 1 & 2 and the case has been registered under the aforesaid Section. Thus,

considering the nature of offence, I am not inclined to grant anticipatory bail to the petitioner-accused No.3. However, keeping in mind the view taken

by Hon'ble the Apex Court in the case of Arnesh Kumar (Supra), this Court is inclined to direct thus:-.....

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

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

Therefore, in view of the observations laid down in the judgment referred above, I deem 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 petitioner No. 3 fails to cooperate in the investigation.

(ii) That, the petitioner Nos.3 should first be summoned to cooperate in the investigation. If he cooperate in the investigation then the occasion of his arrest should not arise.

Â (iii) That, if the petitioner No.3 files an application under Section 437 of Cr.P.C. for regular bail before lower Court, then same shall be considered expeditiously as soon as possible, preferably, on the same day.

Accordingly, this petition stands disposed off with the aforesaid directions in regards of petitioner-accused No.3.

However, in regards of the petitioner-accused Nos. 1 & 2, this Court by looking to the circumstances of the case and the facts that petitioner-

accused Nos. 1 & 2 are respectively father-in-law and mother-in-law of the complainant, there are general allegations levelled against them for

demand of dowry and committing cruelty, complainant alongwith petitioner-accused No.3 was residing separately from them since year 2019, no

further custodial interrogation is required in this case, it is a family matter, so in this type of matter, there is always possibility of mutual settlement

between the parties, no further custodial interrogation is required in this case, there is no probability of their absconding or tampering with the evidence

of the prosecution witnesses, it is time of COVID-19 due to which social distancing is very necessary but without expressing any opinion on merits of

the case, is of the view that it would be appropriate to enlarge the petitioner Nos. 1 & 2 on anticipatory bail.

Consequently, the application under Section 438 of Cr.P.C. is hereby allowed in regards of petitioner Nos. 1 & 2. It is directed that petitioners-

Babulal Yadav & Smt. Kamla w i l l surrender themselves before Investigating Officer within ten days' from the date of receipt of certified copy of

this order and then in the event of arrest, they be released on bail on their furnishing bail bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only)

each with one solvent surety each in the amount of Rs. 50,000/- to the satisfaction of the Arresting Authority.

The petitioner Nos. 1 & 2 shall make themselves available for interrogation by a police officer as and when required. They shall further abide by the

other conditions enumerated in sub-section (2) of Section 438 of Cr.P.C.
C.C. as per rules.