

(2020) 02 MP CK 0102

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 6537 Of 2020

Baldev Singh Bhadoriya

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 19-02-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 41, 41(1), 41(A), 438
Indian Penal Code, 1860 — Section 420

Citation : (2020) 02 MP CK 0102

Hon'ble Judges : Vishal Mishra, J

Bench : Single Bench

Advocate : Sushil Rathore, Aditya Singh

Final Decision : Disposed Of

Judgement

This is first bail application under Section 438 of Cr.P.C. preferred by the applicant for the alleged offences registered at Crime No.35/2020 at Police

Station Maharajpura, District Gwalior for the offence punishable under Section 420 of IPC.

It is alleged by counsel for the applicant that the applicant has falsely been implicated in the case and he has not committed any offence in any

manner. Allegation of cheating and forgery has been alleged against the applicant. He is ready to abide by all the terms and conditions as may be

imposed by this Court. The applicant is ready to cooperate in the investigation and prayed that application may be allowed in terms of Arnesh Kumar

Vs. State of Bihar, (2014) 8 SCC 273 and counsel for the applicant undertakes that the applicant shall make other co-accused Aditya Singh Bhadoriya

to surrender before the concerned Court within a period of seven days from today.

Learned Public Prosecutor opposed the prayer and prayed for rejection of the application.

Heard the learned counsel for the parties and perused the case diary.

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 their 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 subject to condition that applicant shall make other co-accused Aditya Singh Bhadoriya surrender before the concerned Court within a period of seven days from today. Benefit of this order will be made available to the applicant subject to fulfillment of the condition imposed by this Hon'ble Court regarding surrender of co-accused Aditya Singh Bhadoriya who is stated to be a main accused in the case and son of the present applicant, and direct thus :

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

(ii) That, the applicant should first be summoned to cooperate in the

investigation. If the applicant 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.

Certified copy as per rules.