

**(2000) 03 MP CK 0078**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Criminal Case 1296 of 2000**

Chandrashekhar Shrivastava and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

**Date of Decision : 29-03-2000**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 437, 438, 439  
Penal Code, 1860 (IPC) — Section 498A

**Citation : (2000) 2 MPHT 321**

**Hon'ble Judges : Ramesh Surajmal Garg, J**

**Bench : Single Bench**

**Advocate : Hemant Namdeo, for the Appellant; Manoj Naidu, for the Respondent**

**Final Decision : Allowed**

## **Judgement**

R.S. Garg, J.—Heard.

2. The case diary of Crime No. 9/2000 of P.S. Masturi (Bilaspur) relating to offence punishable u/s 498A of I.P.C. perused.

3. The learned Court below has rejected the application mainly on the ground that an application for grant of anticipatory bail was rejected on 4-2-2000 and since thereafter there was no change in the circumstance, the applicants would not be entitled for an order of bail. In the opinion of this Court, the Court below did not try to appreciate the distinction between Section 438, Cr.P.C. and Section 439, Cr.P.C. The most important change which occurred in the circumstance was that the applicants were arrested on 8-2-2000. No Court can loose sight of the fact that considerations which may persuade a Court to grant bail u/s 439, Cr.P.C., are always different and sometimes may be irrelevant for grant of Order u/s 438, Cr.P.C. Simply because an application u/s 438, Cr.P.C. stands rejected, the right of the applicants to be released on bail u/s 439, Cr.P.C. cannot be turned out. In a given case a Magistrate, even after rejection of an application u/s 438, Cr.P.C., may grant bail to the accused u/s 437, Cr.P.C. A Court should

always remember that the "changed circumstance" does not simply mean an absolute overhaul in the circumstances but simply means that something creeping up which may persuade the discretion of the Judge hearing the application to grant bail in favour of the accused.

4. In the present case, the offence is triable by Magistrate 1st Class and it cannot be gainsaid that looking to the workload in the Magisterial Courts a trial can be concluded within short span of time. If the words "Changed circumstance" are given a very restricted meaning then on rejection of the application no accused would ever be released till conclusion of the trial. Once it is found that the liberty of the accused has been seriously hampered, the police agency is either not proceeding with the investigation or has already filed the challan or the accused is not needed in connection with the investigation or the offences are not punishable with life or capital punishment, the offences are triable by Magistrate 1st Class the accused has remained in jail for sufficiently long time then in such and similar cases the accused certainly would be entitled for grant of bail.

5. The above referred examples are not exhaustive but are only examples.

6. The Court hearing the application for grant of bail should not exercise its jurisdiction for rejecting the application but should always take into consideration that whether justifiable reasons exist for rejecting the application.

7. Taking into consideration the totality of circumstances, the pre trial detention of each of the applicant and that the offences are triable by Magistrate 1st Class, I consider present to be a fit case for directing release of the applicants on bail.

8. On the applicants furnishing a personal bond in the sum of Rs. 5000/- each with one surety each in the like amount to the satisfaction of C.J.M. Bilaspur, they be immediately released on bail for their appearance before the said Court/ committal Court, and/or as and where so directed.

9. Let a copy of this order be sent to the learned Judge who dealt with the application of the present applicants.

10. C.C. must be supplied today itself.