

**(2020) 09 MP CK 0155**

**In the Madhya Pradesh High Court**

**Case No :** Miscellaneous Criminal Case No. 12321 Of 2020

Deepak Raghuwanshi

APPELLANT

Vs

State Of M.P.

RESPONDENT

**Date of Decision :** 16-09-2020

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 438  
Essential Commodities Act, 1955 — Section 3, 7  
Indian Penal Code, 1860 — Section 409

**Citation :** (2020) 09 MP CK 0155

**Hon'ble Judges :** Anand Pathak, J

**Bench :** Single Bench

**Advocate :** Sanjay Bahirani, A.S. Ghuraiya

**Final Decision :** Dismissed

## Judgement

The applicant has filed this first application under Section 438 of Cr.P.C for grant of anticipatory bail and she is apprehending her arrest on the basis of offence registered vide Crime No.232/2018 at Police Station- Aron, District Guna, for the offence punishable under Sections 3/7 of the Essential Commodity Act and Section 409 of IPC.

It is the submission of the learned counsel for the applicant that false case has been registered against the applicant and he is apprehending his arrest on the basis of registration of offence referred above. Applicant was a salesman in Fair Price Shop and the allegations are against him regarding misappropriation of funds and food grains alongwith other allegations since he is not a government servant, therefore, Section 409 of IPC is not attracted over the applicant. Counsel relied upon the judgment passed in the case of Shri Mahesh Chourasiya Vs. State of M.P. and other in MCRC No.2967/2008 decided on 11.10.2013.

It is further submitted that although charge-sheet has already been filed but since initially allegations were of Section 3/7 of Essential Commodity Act and when applicant appeared before this trial Court, he found that offence under

Section 409 of IPC was added in the charge-sheet. Therefore, instead of appearing in the trial court he tried to pursue his other remedy by way of filing of this application. Counsel further relied upon the judgment rendered by the Hon'ble Apex Court in the case of Pradeep Ram Vs. State of Jharkhand reported in AIR2019 SC 3193 and submitted that if a person gets bail in a case and subsequently thereafter, some other provisions/offences are added, then unless Investigating Officer moves for application for cancellation of bail, he cannot arrest the accused persons. Therefore, he seeks benefit of anticipatory bail as confinement would bring social disrepute and personal inconvenience.

Learned Panel Lawyer for the State opposed the prayer and submitted that applicant is facing trial for offence under Section 3/7 of Essential Commodity Act as well as Section 409 of IPC and present case is of year 2018 whereas charge-sheet has long been filed. Applicant did not cooperate in trial and tried to get the sympathy of this court. Looking to the nature of allegation which is a white collar crime, he cannot be given benefit of anticipatory bail.

Heard learned counsel for the parties at length through VC and considered the arguments advanced by them.

Considering the submissions and looking to the fact that charge-sheet has already been filed much before the instant application being preferred and it was the duty of the applicant either to approach earlier before filing of charge-sheet or to appear before the trial court to seek regular bail.

So far as theory of public servant is concerned, Section 409 of IPC does not cover public servant only but covers bankers, merchants, factors, brokers, attorney or agent. The scope of Section 409 of IPC is wider, therefore, prima facie offence can be attributable over applicant in respect of Section 409 of IPC. As charge-sheet has already been filed, then it is better for the applicant to approach the trial court in accordance with law and same shall be dealt with as per law by the trial Court.

Application sans merit and is hereby dismissed.