

(2021) 09 MP CK 0061

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No.40352 Of 2021

Dr. Sheikh Shafique @ Shafi

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 13-09-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Citation : (2021) 09 MP CK 0061

Hon'ble Judges : Virender Singh, J

Bench : Single Bench

Advocate : A. Usmani, Sunil Gupta, Qasim Ali

Final Decision : Disposed Of

Judgement

Virender Singh, J

FIR No.

Dated

Police Station

Sections

35/2021

21.6.2021

Nerwa, Distt. Shimla

21-61-85, NDPS Act

1. As declared by the petitioner, this is his first application under Section 438 Cr.P.C seeking anticipatory bail. Earlier this case was registered for the offences punishable under the provisions of Indian Penal Code as well as for the offences punishable under Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The learned Trial Court was of the opinion that since the

allegation under the SC/ST Act had been made, the anticipatory bail is not maintainable and dismissed the same.

2. When the matter was presented before this Court, the Court was of the opinion that no finding has been recorded by the Trial Court as to whether prima facie offences punishable under the SC/ST Act have been made out or not and remitted back the case to the Trial Court to record finding on this fact. This time again the grievance of the petitioner is that the Trial Court has not recorded finding as directed by this Court on the issue as to whether the prima facie offences punishable under the SC/ST Act is made out or not.

3. During the course of argument, learned counsel for the petitioner pointed out an order dated 9.12.2020 passed by the Trial Court/Special Judge, SC/ST Act, inter alia, recording that earlier this case was being investigated by the City Superintendent of Police, Jahangirabad who examined/investigated the caste certificate of the petitioner and found it to be false. Therefore, he transferred the case diary for further investigation of the allegation made by the complainant to Ashok Garden Police Station who was otherwise authorized to investigate the cases not falling under the SC/ST Act.

4. Learned counsel for the objector victim admitted that no action had been taken against the conclusion arrived at by the C.S.P that he does not belong to SC/ST.

5. Having regard to the aforesaid subsequent development, there is no need to send back the matter again to the Trial Court to record a finding as to whether in the present case offence under the provisions of SC/ST Act is prima facie made out or not. However, as the merits have not been considered by the Trial Court with regard to offences punishable under the Indian Penal Code, therefore, the petitioner is permitted to withdraw the present petition with liberty to agitate the issue before the Court concerned for the offences punishable under the Indian Penal Code.

6. With the aforesaid liberty the petition stands disposed of.