

(2020) 09 MP CK 0047

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 29669 Of 2020

Jai Prakash Pateria Alias J.P.

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 07-09-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 379

Citation : (2020) 09 MP CK 0047

Hon'ble Judges : Rajendra Kumar Srivastava, J

Bench : Single Bench

Advocate : Atul Anand Awasthy, Puneet Shroti

Final Decision : Disposed Of

Judgement

This is first bail application filed on behalf of the applicant under Section 438 of the Code of Criminal Procedure.

The applicant is apprehending his arrest in connection with Crime No.282/2020 registered at Police Station-Dehat, District-Tikamgarh (M.P.), for the offence punishable under Section 379 of the IPC.

As per prosecution case, on 19.07.2020, complainant-Kavira lodged a report against the present applicant alleging that he was sleeping along with Ravi Lodhi in the roof of Vikram. At about 12:00 o'clock in the night, complainant heard the noise of tractor then in the light of torch he saw the present applicant carrying mud (bajri) in his tractor. When he got down from stairs, then present applicant ran away from the spot. Thereafter, on the report of the complainant, a case has been registered against the present applicant for the aforesaid offence.

Learned counsel for the applicant submits that the applicant is innocent person and has been falsely implicated in this case. Present applicant did not commit any offence. On the ground of suspicion, present applicant has been made as an accused in the present case. There is 8-9 days delay in lodging the said FIR. No

custodial interrogation of present applicant is required in the case. There is no criminal past of applicant. The applicant is ready to co-operate the police in the investigation of matter. The offences are triable by Magistrate and not having punishment more than 3 years. 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.

Per-contra, learned P.L. for the respondent/State opposes the bail application.

Heard the arguments of both the parties and perused the case diary which is submitted in PDF format.

On perusal of case diary, it is found the allegation against the present applicant is that he stolen the said mud (bajri) on his tractor and in the light of torch, complainant was also seen the present applicant. Complainant had lodged named FIR before the concerned police station. Therefore, the allegations are specific and thus, I am not inclined to grant anticipatory bail to the applicant.

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:-

- (i) That, the police may resort to the extreme step of arrest only when the same is necessary and the applicant fails to cooperate in the investigation.
- (ii) That, the applicant should first be summoned to cooperate in the investigation. If the applicant cooperates in the investigation then the occasion of his arrest should not arise.

Accordingly, this petition is disposed off.

C.c as per rules.