
(2020) 12 MP CK 0193

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No.51670 Of 2020

Laxman Sharma And Others

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 22-12-2020

Acts Referred:

Constitution Of India, 1950 — Article 21

Code Of Criminal Procedure, 1973 — Section 41, 41(1), 41A, 438

Indian Penal Code, 1860 — Section 34, 420

Citation : (2020) 12 MP CK 0193

Hon'ble Judges : Vishal Mishra, J

Bench : Single Bench

Advocate : Bhanu Pratap Singh, Rajesh Kumar Shukla

Final Decision : Allowed

Judgement

Vishal Mishra, J

In the wake of unprecedented and uncertain situation due to outbreak of the Novel Corona Virus (COVID-19) and considering the advisories issued

by the government of India, this application has been heard and decided through video conferencing to maintain social distancing. The parties are being

represented by the respective counsel through video conferencing, following the norms of social distancing/physical distancing in letter and spirit.

Heard learned counsel for the parties.

The applicants have filed this first application under section 438 of the Cr.P.C. for grant of bail.

The present first application under Section 438 of Cr.P.C for anticipatory bail as they have an apprehension of their arrest in connection with Crime

No. 428/2019 registered at Police Station Hazira, Distt. Gwalior for the offences

punishable under Section 420 and 34 of IPC.

It is submitted by learned counsel for the applicants that as per the prosecution story the allegation of forgery and cheating is alleged against the

applicants in regard to non registering of the sale deed according to the agreement as has been made between the parties. It is further submits that

parties have already settled their matter. They are ready to cooperate with the investigation and prayed that application may be allowed in terms of

Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273.

Per contra, learned counsel for the State has opposed the bail application stating that investigation is pending in the matter, but he fairly submits that

applicants are having no criminal antecedents.

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

The Supreme Court by order dated 23-3-2020 passed in the case of IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS in SUO MOTU

W.P. (C) No. 1/2020 has directed all the States to constitute a High Level Committee to consider the release of prisoners in order to decongest the

prisons. The Supreme Court has observed as under :

“The issue of overcrowding of prisons is a matter of serious concern particularly in the present context of the pandemic of Corona Virus (COVID

19).

Having regard to the provisions of Article 21 of the Constitution of India, it has become imperative to ensure that the spread of the Corona Virus

within the prisons is controlled.

We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services

Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine which

class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory

could consider the release of prisoners who have been convicted or are under trial for offences for which prescribed punishment is up to 7 years or

less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.

It is made clear that we leave it open for the High Powered Committee to

determine the category of prisoners who should be released

as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the

offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider

appropriate.â??

Considering the overall facts and circumstances of the case and looking to the pandemic situation of COVID-19 and coupled with the fact that

offence under Section 420 is being registered against the present applicants and also 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 applicants do not cooperate in the investigation. The applicants should first be summoned to cooperate in the investigation. If the

applicant cooperate in the investigation then the occasion of his 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 direct thus:

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

(ii) That, the applicants should first be summoned to cooperate in the investigation. If the applicants cooperate in the investigation then the occasion of their arrest should not arise.

(iii) The applicants will inform the SHO of concerned police station about their residential address in the said area and it would be the duty of the

Public Prosecutor to send E-copy of this order to SHO of concerned police station for information.

With the aforesaid directions, the present anticipatory bail application stands disposed of.

E- copy of this order be provided to the applicants and E-copy of this order be sent to the trial Court concerned for compliance. It is made clear that

E-copy of this order shall be treated as certified copy for practical purposes in respect of this order.

Certified copy/ e-copy as per rules/directions.