

(2020) 08 MP CK 0147

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 24078 Of 2020

Mohan

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 28-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 381, 411, 414

Citation : (2020) 08 MP CK 0147

Hon'ble Judges : Rajendra Kumar Srivastava, J

Bench : Single Bench

Advocate : Anurag Sahu, Amit Bhurrak

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.286/2019 registered at Police Station-Mohkhed, District-Chhindwara (M.P.), for the offence punishable under Sections 381, 411 and 414 of the IPC.

As per prosecution case, on 24.10.2019, complainant-Aditya Nahar lodged a report against unknown person alleging that he is running H.P. Gas Agency, situated at Salimeta Linga, District-Chhindwara. During the period of 21.10.2019 to 23.10.2019 some unknown person committed theft of 408 cylinders from the said Godown. During investigation, police has arrested other co-accused who had stolen the property i.e. Gas cylinder and it is found that the present applicant has purchased the stolen property from the co-accused person. Thereafter, a case has been registered against the present applicant and other co-accused for the aforesaid offences.

Learned counsel for the applicant submits that the applicant is innocent person and has been falsely implicated in this case. The applicant made as an accused

on the basis of memorandum statement of other co-accused which is not admissible. The offence under Sections 381 and 414 of the IPC is not made out against the present applicant. The applicant is a businessmen. He further submits that all cylinders have been seized by the police and no custodial interrogation of present applicant is required in the case. The police never issued any notice to the applicant. 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. Besides this, it is submitted that co-accused of the case have been enlarged on bail. 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 had purchased the gas cylinder alleged to be stolen by co-accused persons. The police has also recovered the stolen property from the possession of applicant/accused on the instance of co-accused persons. 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.