
(2020) 09 MP CK 0164
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 4513 Of 2020

Rakesh Shrivastava

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 21-09-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 406, 420

Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 14A

Citation : (2020) 09 MP CK 0164

Hon'ble Judges : S. A. Dharmadhikari, J

Bench : Single Bench

Advocate : Ankur Tiwari, Upendri Singh

Final Decision : Allowed

Judgement

In pursuance of the directions issued by the Apex Court and guidelines issued by the High Court of Madhya Pradesh in the wake of COVID-19 outbreak , the matter was taken up through video conferencing while adhering to the norms of social distancing prescribed by the Government.

Case Diary is perused.

Learned counsel for the rival parties are heard.

This appeal has been preferred under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (for short "the Act") against the impugned order dated 10/07/2020 passed by Special Judge (Atrocities) Gwalior (M.P.), whereby appellant's application under Section 438 of the Code of Criminal Procedure has been rejected by the Court below.

Appellant apprehends arrest in connection with Crime No.193/2020 registered at Police Station Inderganj, District Gwalior (M.P.) for the offences punishable under Sections 420 and 406 of the IPC and 3(2)(v) of the Act.

Allegation against the appellant and co-accused in short is that they entered into contract regarding construction of the house. Appellant has taken amount of Rs. Twenty Lakh from the complainant in the year 2013 and entered into contract but after passage of time, neither amount has been refunded nor construction has been completed as per the contract. On the aforesaid basis, crime has been registered.

Learned counsel for the appellant submits that he has falsely been implicated in the matter. There is no allegation of beating or harassing by the appellant in relation to caste. The report has been lodged after elapse of seven years. Learned counsel for the appellant has relied on the judgment of the Apex Court reported in V.Y. Jose & another Vs State of Gujarat and another 2009 (3) SCC 78 in which it has been held that breach of contract can not be given a colour of criminal. Learned counsel for the appellant further submitted that in view of COVID-19 outbreak, detention of appellant in already congested prisons may be detrimental. It is submitted that appellant is permanent resident of Gwalior and there is no likelihood of absconsion or tampering with the prosecution evidence. With the aforesaid submissions prayer for grant of anticipatory bail is made.

On the other hand, learned Panel Lawyer appearing for the respondent/State opposed the prayer for grant of bail and prayed for rejection of the application.

At this stage, learned counsel for the appellant volunteered to deposit an amount of Rs. 10,000/- (Rs. Ten Thousand Only) in the account of the High Court Bar Association, Gwalior.

Taking into consideration the facts and circumstances of the case, but without expressing any opinion on merits of the case, I deem it appropriate to extend the benefit of anticipatory bail to the appellant.

It is hereby directed that in the event of arrest of appellant he shall be released on bail on furnishing a personal bond of Rs.50,000/- (Rupees Fifty Thousand only) with a local solvent surety of the like amount to the satisfaction of Arresting Authority.

It is made clear that benefit of bail shall be extended to the applicant only on depositing an amount of Rs.10,000/- (Rs.Ten Thousand Only) in the account of the High Court Bar Association, Gwalior for the purpose of assistance and rehabilitation of those members of the Bar, who are facing financial distress due to Lockdown and restrictive functioning of the courts owing to ongoing COVID-19 pandemic. This Court has no manner of doubt that the office bearers and the Senior members of the Bar shall ensure that the donation reaches the rightful and deserving claimants. The applicant shall submit an attested photocopy of such receipt before the concerned court for placing the same on record.

The appellant shall also furnish a written undertaking that he will abide by the terms and conditions of various circulars, as well as, orders issued by the Central Government, State Government and local administration from time to time such

as maintaining social distancing, physical distancing, hygiene etc. to avoid proliferation of Corona virus.

This order will remain operative subject to compliance of the following conditions by the applicant:-

1. The applicant shall install Aarogya Setu App (if not already installed) in his mobile phone.
2. The applicant will comply with all the terms and conditions of the bond executed by him;
3. The applicant will cooperate in the investigation/trial, as the case may be;
4. The applicant will not indulge in extending inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to the Police Officer, as the case may be;
5. The applicant will not seek unnecessary adjournments during the trial;
6. The applicant will not leave India without previous permission of the trial Court/Investigating Officer, as the case may be.
7. If the applicant commits any offence while being on anticipatory bail, then this order shall automatically stand cancelled without reference to the Court.

Accordingly the appeal is allowed and the impugned order is hereby set aside.

Learned Panel Lawyer is directed to send an e-copy of this order to the Station House Officer of the concerned Police Station for information and necessary action.

E- copy of this order be sent to the Court below, if possible by the office of this Court.

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