

(2018) 08 MP CK 0062

In the Madhya Pradesh High Court

Case No : Criminal Miscellaneousellaneous Case No.29694 Of2018

Ramratan Rai And Others

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 07-08-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 82, 299, 301(2), 438

Indian Penal Code, 1860 — Section 34, 294, 323, 324, 325, 326, 506

Citation : (2018) 08 MP CK 0062

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

Bench : Single Bench

Final Decision : Disposed Off

Judgement

I.A. No.6407/18, an application under section 301(2) of the Cr.P.C. is allowed.

Learned counsel for the rival parties are heard.

This is first application under section 438 of the Code of Criminal Procedure.

At the outset, learned counsel for the complainant raised preliminary objection as to maintainability of this anticipatory bail application contending that

applicants were required to remain present at the time of filing of Challan under section 326 of the IPC, but they chose to abscond and, accordingly,

proceedings under section 299, Cr.P.C. have been initiated. It is submitted that in such a scenario, this anticipatory bail application is not maintainable

in the light of judgment of the Apex Court rendered in the case of State of M.P. Vs. Pradeep Sharma ((2014)2 SCC 171).

The said objection is rebutted by learned counsel for the applicants by contending that applicants were already on bail under sections 294, 323, 506

read with 34, 324 and 325 of the IPC and were required to appear before the trial Court at the time of filing of Challan, but since the offence under

section 326, IPC was enhanced, apprehending their arrest, they chose not to appear before the trial Court and instead have moved this anticipatory

bail application. It is submitted that, therefore, they cannot be said to be absconders in strict sense.

Having heard learned counsel for the parties, it is found that the objection, as raised by learned counsel for the complainant, is not substantiated by

relevant order-sheets of the trial Court to suggest that applicants have been declared absconders/proclaimed offenders under section 82 CrPC to

attract the bar set out in the case of Pradeep Sharma (Supra). Hence, the same cannot be countenanced and is rejected.

As such arguments heard on merits of the prayer made on behalf of the applicants, who apprehend arrest in connection with Crime No.268/2018

registered at Police Station Kurwai, District Vidisha, for the offences punishable under sections 294, 323, 506, 34, 324, 325 and subsequently enhanced

326 of the IPC.

Learned counsel for the applicants submits that the applicants are already on bail in all the sections except S.326 IPC and have not misused the liberty

so granted. Therefore, in the light of decision rendered in the case of Ramesh Kumar Vs. State of MP (1988 (2) MPWN SN 172), the applicants are

entitled to anticipatory bail.

However, the judgment in the case of Ramesh Kumar (Supra) is distinguishable on facts, inasmuch as in that case the injuries caused were simple in

nature, whereas the case in hand relates to causing of grievous injury on vital part of the body resulting into comminuted fracture of nasal bone. As

such, the said precedent is of no assistance to the applicants.

Besides, it is well settled that while granting bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the

severity of the punishment which conviction will entail, the character, behaviour means and standing of the accused, circumstance which are peculiar to

the accused, reasonable possibility of securing the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger

interests of the public or State and similar other considerations (Prahlaad Singh Bhati Vs. NCT Delhi (AIR 2001 SC 1444), referred to).

Accordingly, the aforesaid contention of the applicants, being devoid of merit and substance, cannot be accepted.

Faced with such a situation, learned counsel for the applicants submitted that the allegation of causing injury between the eye-brows leading to

enhancement of section 326 of the IPC is attributed to applicant no.3 Deepak Rai, and, at this stage he does not intend to press the application so far

as it relates to Deepak.

Further, it is submitted by learned counsel for the applicants that as far as remaining applicants viz. applicant no.1 Ramratan and applicant no.2

Abhishek are concerned, they are already on bail in all the sections and the enhanced section 326 of the IPC is not attracted towards them as they are

not the authors of the corresponding grievous injury. It is submitted that the other injuries received by the complainant are abrasion and contusion and

no grievous injury has been caused to him by applicant nos. 1 and 2. Accordingly, prayer for grant of anticipatory bail to applicant nos. 1 and 2 is

made.

In response, learned Public Prosecutor and learned counsel for the complainant opposed the bail application and prayed for its rejection.

Taking into consideration the overall 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 applicant nos. 1 and 2.

It is hereby directed that in the event of arrest of each one of applicant nos. 1 and 2 namely Ramratan Rai and Abhishek Rai respectively, he shall be

released on bail on his furnishing a personal bond of Rs.50,000/-(Rupees Fifty Thousand only) with one solvent surety of the like amount to the

satisfaction of Arresting Authority.

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

1. They will comply with all the terms and conditions of the bond executed by them;
2. They will cooperate in the investigation/trial, as the case may be;
3. They 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;
4. They shall not commit an offence similar to the offence of which they are accused;

5. They will not seek unnecessary adjournments during the trial; and
6. They will not leave India without previous permission of the trial Court/ Investigating Officer, as the case may be.

C.C. as per rules.

The applicaton, so far as it relates to applicant no.3 Deepak Rai, the same stands dismissed as withdrawn.