

(2018) 05 MP CK 0079
In the Madhya Pradesh High Court
Case No : MCRC-17725 OF 2018

Subedar Singh

APPELLANT

Vs

State Of Madhya pradesh

RESPONDENT

Date of Decision : 11-05-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438, 451, 457, 482
Mines and Minerals (Regulation and Development) Act, 1957 — Section 4(1A), 21
Madhya Pradesh Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2006 — Section 18

Citation : (2018) 05 MP CK 0079

Hon'ble Judges : G. S. AHLUWALIA, J

Bench : Single Bench

Advocate : Anant Kumar Bansal, BPS Chauhan

Judgement

Case Diary is available.

This is first application under Section 438 of CrPC for grant of anticipatory bail.

The applicant apprehends his arrest in connection with Case No. 154/2018 (Parivad Patra) registered by Mining Officer District Gwalior for the

offence punishable under Section 4(1-A), 21-1 of the Mines and Minerals (Regulation and Development) Act, 1957 (in short "Act, 1957") and

Rule 18-1 of Madhya Pradesh Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2006 (in short "Rules, 2006").

It is submitted by the counsel for the applicant that according to the prosecution case, on 12.12.2015 a truck bearing registration No. MP07-HB-1024

was found to be transporting minor minerals contrary to the provisions of Section 4(1-A) of the Act, 1957. It is further submitted that the applicant is

the owner of the said truck. The applicant had filed an application under Sections 451 and 457 of Cr.P.C. for release of the truck on supurdagi. The

said application was rejected by the Magistrate as well as the revision was dismissed by the Revisional Court. Being aggrieved by the order passed by

the Court below, the applicant filed an application under Section 482 of Cr.P.C. and this Court by an interim order dated 03.03.2016 had directed for

release of the vehicle on interim custody to the applicant on his furnishing an interim custody bond in the sum of Rs.12,00,000/-. The surety bond as

directed by this Court was furnished by the applicant and the vehicle has been released in his favour. The petition filed by the applicant under Section

482 of Cr.P.C. was registered as M.Cr.C. No. 1053/2016 and has been finally disposed of by this Court by order dated 25.04.2018 on the following

conditions:-

1. If the applicant appears before the Trial Magistrate within 10 days from today and applies for grant of bail and if the bail is granted, then he shall

not be required to either deposit an amount of Rs.2,60,000/- or return the truck to the authorities.

2. If the bail application is rejected and the applicant for one reason or another does not surrender before the Court, then he shall deposit an amount of

Rs.2,60,000/- or shall return the truck in question to the authorities within 20 days from today.

3. If the applicant is granted bail, the order dated 3/3/2016 passed by this Court shall automatically get confirmed and it will remain in force till the

conclusion of proceedings before the Magistrate.

The applicant filed an application for grant of anticipatory bail but the application was rejected by the Sessions Court on the ground that although the

offence under Section 4(1-A) and 21-1 of the Act, 1957 has been registered but the maximum sentence provided is for two years, therefore, the

offences are bailable.

As the applicant could not appear before the Magistrate within ten days as directed by this Court by order dated 25.04.2018, therefore, another

application under Section 482 of Cr.P.C. was filed by the applicant before this Court, which was registered as M.Cr.C. No. 17280/2018 and this Court

by order dated 09.05.2018 has granted a further period of ten days, i.e., up to 19.05.2018 to appear before the Magistrate. It is further submitted that

the observation made by the Sessions Court that the offence under Section 4(1-A) of the Act, 1957 is bailable, is legally incorrect because Section 21

of the Act, 1957 provides for penalties, which reads as under:-

21. Penalties.-(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1-A) of Section 4 shall be punishable with imprisonment

for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area.

It is submitted that prior to 12.01.2015, the maximum sentence provided under Section 21 of the Act, 1957 was two years, however, by the Mines and

Minerals (Regulation and Development) Amendment Act, 2015, the maximum sentence has been enhanced to five years and in view of Schedule II

of Code of Criminal Procedure, offence which is punishable with imprisonment of three years or more under any other Act, would be non-bailable.

Thus, it is submitted that the observation made by the Court below that the offence under Section 4(1-A) of the Act, 1957 is a bailable offence is

factually and legally incorrect. It is further submitted that Rule 18 of the Rules, 2006 provides that the authority may impose the penalty to the extent

of 10 times of market value of the minor minerals and the offence can be compounded.

The Division Bench of this Court in W.A. No. 1320/2011 by order dated 21.03.2012 has passed the following order:-

From the reading of the above quoted rule, it is clear that the order under sub-rule (5) can be passed by the Collector only as a measure to

compound the offence punishable under sub-rule (1) and the appellant cannot be compelled to compound the offence. Further, on the nonpayment of

penalty imposed, the only course left to the Collector is to make a report to the Magistrate having jurisdiction to try such offence.

It is further submitted that since the applicant cannot be compelled to compound the offence, therefore, he is ready to appear before the Magistrate to

face the trial. There is no possibility of his absconding or tampering with the prosecution case.

Per contra, the application is opposed by the State counsel. However, after going through the different orders passed by this Court, it is fairly

conceded by the State that the maximum liability of the applicant is of Rs.2,60,000/-.

Considering the facts and circumstances of the case but without commenting on the merits of the case, the application is allowed. It is directed that

in case if the applicant appears before the Magistrate on or before 19.05.2018, then he shall be released on bail on furnishing a bail bond in the sum of

Rs.40,000/(Rupees Forty Thousand only) with one surety in the like amount to the satisfaction of the concerning Court.

Needless to emphasis that in case, the applicant fails to appear before the Magistrate by 19.05.2018, then this order shall automatically come to an end.

Certified copy as per rules.