

(2023) 08 MP CK 0144

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 10583 Of 2023

Suresh Dhakad And Others

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 28-08-2023

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r), 3(1)(s), 3(2)(va), 14A(2), 18
Code Of Criminal Procedure, 1973 — Section 41, 41(1)(b)(ii), 437, 438
Indian Penal Code, 1860 — Section 34, 294, 323, 427, 506

Citation : (2023) 08 MP CK 0144

Hon'ble Judges : Satyendra Kumar Singh, J

Bench : Single Bench

Advocate : Rishikesh Bohare, Dinesh Savita

Final Decision : Disposed Of

Judgement

Satyendra Kumar Singh, J

1. Perused the case diary.

2. This appeal has been filed by the appellant under section 14-A (2) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act being aggrieved with the order dated 2.8.2023 passed by Special Judge, Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, District Guna in Case No/Bail Application No.496/2023, whereby, the application filed by the appellants under section 438 of Cr.P.C has been rejected.

3. Appellants apprehend their arrest in connection with Crime No.71/2023 registered at Police Station Bamori, District Guna for commission of offences punishable under Sections 294, 323, 506, 427, 34 of IPC and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the SC/ST (Prevention of Atrocities) Act.

4. Prosecution case in brief is that on 27.5.2023 at about 20:00 hours when complainant Sukhram Sahariya who is a member of SC/ST community was

standing in front of his house, appellants on previous enmity started abusing and insulting him calling his caste name and assaulted with wooden stick and kicks and fists.

5. Learned counsel for the appellants submits that prior to the alleged offence on 26.5.2023 complainant along with other co-accused persons themselves abused and assaulted them about which an FIR bearing Crime No.69/2023 was registered at Police Station Bamori, District Guna against the complainant, therefore, as a counter-blast complainant has lodged this false and fabricated FIR against the appellants. No offence is made out against the appellants. Except offence punishable under SC/ST Act, rest all the offences are bailable in nature. Their custodial interrogation is not required, therefore, the appellants are entitled for anticipatory bail.

6. Learned counsel for the respondent/State has opposed the appeal and submits that considering the bar as contained under Section 18 of SC/ST Act, the appellants are not entitled to be enlarged on anticipatory bail.

7. Having considered rival submissions, material pointed out by learned counsel for the appellants, contents of the FIR and over all facts and circumstances of the case and also the fact that the requirement of the custodial interrogation cannot be denied at this stage, appellants are not entitled for anticipatory bail. However, looking to the fact that the offence involved in the case are not punishable with more than 7 years of imprisonment and Section 41(1) of Cr.P.C. provides that the offences for which punishment prescribed is imprisonment for a term upto seven years, the accused may be kept in custody only if the condition enumerated under Section 41(1)(b)(ii) of Cr.P.C. exists. In the case of *Arnesh Kumar vs. State of Bihar & another* [(2014) 8 SCC 273], the Apex Court has held as under:-

".....the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorize his further detention and release the accused.....".

8. Therefore, in view of the observations laid down in the judgement referred above, I deem it fit to direct as under :-

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

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

(iii) That, if the appellants are arrested and they want to file application under Section 437 of Cr.P.C. for regular bail before lower Court, then they will be produced before the lower Court without any delay.

9. Lower Court is also directed to consider their bail application as expeditiously as possible, preferably, on the same day.

10. This appeal is disposed off with the aforesaid directions.

Certified copy, as per rules.