

MCRC.4357/2017

Sobran Batham
V.
State of M.P.

02/05/2017

Smt. Uma Kushwaha, counsel for the applicant.

Shri Prakhar Dhengula, Panel Lawyer for the respondent/State.

This application under Section 438 of CrPC has been filed for grant of anticipatory bail.

The applicant apprehends his arrest in connection with Crime No.142/2016 registered by Police Station Gijaurra, District Gwalior for offence under Sections 327,323,294,506-B,34,329 of IPC.

It is submitted by the counsel for the applicant that the co-accused person has been granted bail under Section 439 of CrPC.

A preliminary objection has been raised by the State counsel that the police has filed the charge-sheet against the applicant showing him to be absconding and, therefore, in the light of the judgment passed by the Supreme Court in the case of **State of M.P. v. Pradeep Sharma** reported in **(2014) 2 SCC 171**, the present application for grant of anticipatory bail is not maintainable.

Refuting to the submissions made by the counsel for the State, it is submitted by the counsel for the applicant that in the case of **Pradeep Sharma (supra)** the proceedings under Section 82 of CrPC were already initiated, therefore, it was held that the application for grant of anticipatory bail is not maintainable but in the present case, there is nothing on record to show that any

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proclamations requiring the appearance of the applicant under Section 82 of CrPC has been issued. Therefore, the law laid down by the Supreme Court in the case of **Pradeep Sharma (supra)**, would not apply.

Heard the learned counsel for the parties.

So far as the question of maintainability of anticipatory bail after the filing of the charge-sheet in absence of the applicant is concerned, the Supreme Court in the case of **Pradeep Sharma (supra)** has held as under:-

“14. In order to answer the above question, it is desirable to refer Section 438 of the Code which reads as under:-

“438. Direction for grant of bail to person apprehending arrest.—(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely—

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) the possibility of the applicant to flee from justice; and
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail: Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this subsection or has rejected the application for grant of anticipatory bail, it shall be open to an officer in charge of a police station to

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arrest, without warrant the applicant on the basis of the accusation apprehended in such application.”

The above provision makes it clear that the power exercisable under Section 438 of the Code is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty.”

Referring to the facts of the said case, it was held by the Supreme Court that the warrants of arrest were issued against the respondents therein and when they could not be traced, a proclamation under Section 82 of CrPC was issued.

In the opinion of this Court, the issuance of proclamation under Section 82 of CrPC is not very material but in fact the spirit of the law is that if a person is absconding and is running away from the law enforcement agencies and the Court, then he is not entitled for anticipatory bail under Section 438 of CrPC. When the investigation is pending and if the person is running away from the Investigating Agency, then it can be said that he has a reasonable apprehension of his arrest and, therefore, during the pendency of the investigation, the application under Section 438 of CrPC for grant of anticipatory bail would be maintainable but once the charge-sheet is filed invoking Section 299 of CrPC and the Magistrate has issued the warrants against the accused, then in the considered opinion of this Court, the application for grant of anticipatory bail would not be maintainable in the light of the judgment passed by the

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Supreme Court in the case of **Pradeep Sharma (supra)**.

At this stage, it is submitted by the counsel for the applicant that he is ready to surrender before the Court and as the co-accused persons have already been granted bail under Section 439 of CrPC, therefore, in case if the applicant files an application under Section 439 of CrPC for grant of regular bail, then the concerning Court may be directed to decide the application as expeditiously as possible.

In view of the direction given by the Supreme Court in the case of **Hussain & Anr. vs. Union of India** passed in **Criminal Appeal No. 509/2017**, no further direction is required.

With aforesaid liberty, the application is **dismissed as not maintainable**.

(G.S.Ahluwalia)
Judge