

**HIGH COURT OF MADHYA PRADESH  
MCRC No.51750/2018  
Dr. Hanif Khan vs. State of MP.**

**Gwalior, dtd. 31/12/2018**

Shri K. K. Shrivastava, counsel for the applicant.

Shri B.M. Patel, Public Prosecutor for the respondent/  
State.

Case diary is available.

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

The applicant apprehends his arrest in connection with Crime No.91/2017 registered at Police Station Karera, District Shivpuri for the offences punishable under Sections 353, 186, 341/14, 201, 392, 397 of the IPC and 11/13 of the MPDVPK Act.

It is submitted by the counsel for the applicant that initially the applicant was arrested on 28/12/2017 and he was released on bail by the Sessions Court by order dated 30/12/2017. However, the police has now added the offence under Section 11/13 of the MPDVPK Act and, therefore, they want to arrest the applicant. It is further submitted that it is well established principle of law that once a person has been granted bail after considering the allegations made against him, then merely because some more offences were added without there being any additional evidence against the applicant, then the applicant should not be denied the benefit of anticipatory bail.

Per contra, it is submitted by the State counsel that the applicant was granted bail by order dated 30/12/2017 and from the said order, it is clear that he was granted bail

only on the ground that the applicant has no criminal history and he is in jail from 28/12/2017 and the trial is likely to take sufficiently long time. The facts of the case were not taken into consideration, therefore, while considering the present application for anticipatory bail, this Court may consider the allegations made against the applicant.

Heard the learned counsel for the parties.

The order dated 30/12/2017 passed by the 2<sup>nd</sup> Additional Sessions Judge, Karera, District Shivpuri in bail application No.218/2017 has been placed on record. From the said order, it is clear that after mentioning the facts in short, the Court below had granted bail to the applicant only on the ground that he has no criminal history and is in jail from 28/12/2017 and the offence is not punishable with death or life imprisonment and there is a possibility that the trial will take time. The gravity of the offence was not taken into consideration by the trial Court, therefore, in the considered opinion of this Court, the application for grant of anticipatory bail in the light of the addition of the offence under Section 11/13 of the MPDVPK Act, has to be considered by this Court on the basis of allegations made against the applicant.

Further the Supreme Court in the case of **Mubin Shaikh Vs. State of Maharashtra and Anr.** reported in **2018 (3) MPLJ (Cri) (SC) 57** has held as under:-

"4. We have carefully perused the impugned order(s) granting bail and we find that there is little reference to/or discussion on the merits of the bail applications but we are satisfied that the significant reason for release is mainly the one stated above. We find that the

aforesaid reason can, on a fair reading, be understood or misunderstood almost as a mitigating circumstance or a kind of a justification for the murder and it is obvious that the fact that the deceased belonged to a certain community cannot be a justification for any assault much less a murder. While it may be possible to understand a reference to the community of the parties involved in an assault, it is difficult to understand why it was said that "the fault of the deceased was only that he belonged to another religion" and further "I consider this factor in favour of the applicants/accused." We have no doubt that a Court fully conscious of the plural composition of the Country while called upon to deal with rights of various communities, cannot make such observations which may appear to be coloured with a bias for or against a community. It is possible that the learned Judge wanted to rule out a personal motive against the victim, but only emphasize communal hatred. It is also possible that the learned Single Judge may not have intended to hurt the feelings of any particular community or support the feelings of another community but the words are clearly vulnerable to such criticism. The direction cannot be sustained.

5. Since, as observed earlier, there is little discussion on the other relevant factors relating to granting or withholding bail in a murder case, we consider it appropriate to set aside the impugned order(s)."

According to the prosecution case, at about 10:30 pm, the forest staffs were on patrolling when they noticed one tractor and trolley was filled with illegally excavated sand and the driver of the tractor-trolley disclosed that the applicant is the owner of the said tractor-trolley. When the tractor and the trolley along with the driver was being brought to the police station Karera, then the applicant along with other co-accused persons came there and they were armed with deadly weapons and started quarreling

with the forest officials and also abused them and forcibly took away the tractor-trolley and the driver.

So far as the illegal excavation of the sand is concerned, it has become a menace to the society . It is not only detrimental to the environment but it is also detrimental to the human life. On previous occasions, even some officials were killed by the persons who were involved in illegal excavation of the sand.

It is submitted by the counsel for the applicant that the applicant does not have any tractor-trolley.

From the panchanama, which was prepared at the relevant time, it is clear that the registration number of the tractor-trolley was not mentioned, therefore, the contention of the applicant that no tractor-trolley is registered in the name of the applicant cannot be accepted at this stage as it appears that the tractor and trolley were not containing any registration number.

Considering the allegations which were made against the applicant as well as the fact that initially the applicant was granted bail by the Sessions Court without considering the seriousness of the allegations, this Court is of the considered opinion that it is not a fit case for grant of anticipatory bail.

The application fails and is hereby rejected.

**(G. S. Ahluwalia)**  
**Judge**