

THE HIGH COURT OF MADHYA PRADESHCRA.3624.2020

[Ramji @ Ramjisharan Patel vs. State of M.P. & Ors.]

Gwalior, Dated 3/7/2020

Shri Rajendra Kumar Tiwari, learned counsel for the appellant.

Shri Ravindra Singh Kushwaha, leaned Dy. Advocate General, for the respondent/State.

None for respondent No.2.

Matter is hearing through Video Conferencing.

[2] I.A.No.6690/2020, an application for urgent hearing, is taken up, considered and allowed for the reasons mentioned therein.

[3] Present Criminal Appeal has been filed under Section 14-A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the order dated 13.6.2020 passed by Special Judge, Datia, whereby; the application of the appellant under Section 438 of Cr.P.C. seeking anticipatory bail has been rejected.

[4] Appellant is apprehending his arrest for the alleged offences registered at Crime No.67/2020 at Police Station Bhandar, District Datia (M.P.) punishable under Sections 323, 294 & 506 of IPC and Section 3(1)(r)(s)(t) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “**the SC & ST Act**”).

[5] Learned counsel for the appellant submits that the appellant

has not committed any offence. He has been falsely implicated in this case. Learned counsel for the appellant further submits that all the registered offences of IPC are triable by JMFC. There is no allegation against the present appellant about inflicting injury to the complainant party or using caste related words. Hence, no offence under the Scheduled Castes and Scheduled Tribes Act is attracted against the present appellant. Hence, prayed to grant benefit of anticipatory bail to the appellant or directions be issued in the light of the decision rendered by the Hon'ble Apex Court in the case of **Arnesh Kumar Vs. State of Bihar:[(2014) 8 SCC 273]**.

[6] Learned Dy. Advocate General for the respondent/State opposed the prayer and has submitted that the case is registered under Sections 323, 294 & 506 of IPC and Section 3(1)(r)(s)(t) of the SC & ST Act. The offence committed by the present appellant is serious in nature. Hence, prayed for rejection of this Criminal Appeal.

[7] Heard learned counsel for the parties at length through Video Conferencing and considered the arguments advanced by them and perused the record.

[8] On perusal of the record, it seems that proximate or life link between the cause and the act is weak, therefore, offence under Section 3(1)(r)(s)(t) of the SC & ST Act is not made out. Thus the

bar contained under Section 14-(A) of SC and ST Act cannot come in the way of the appellants. The Hon'ble Supreme Court in the case of **Arnesh Kumar (supra)** has directed that in offences involving punishment upto seven years imprisonment the police may resort to the extreme step of arrest only when the same is necessary and the petitioner does not cooperate in the investigation. The petitioner should first be summoned to cooperate in the investigation. If the petitioner cooperates in the investigation then the occasion of his arrest should not arise.

[9] For ready reference and convenience, the guidelines laid down by the Supreme Court in the case of **Arnesh Kumar (Supra)** are enumerated below:-

“7.1. From a plain reading of the provision u/S.41 Cr.P.C., it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused

person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.

7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. Before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 Cr.P.C.

9. Another provision i.e. Section 41-A Cr.P.C. aimed to avoid unnecessary arrest or threat of arrest looming large on the accused requires to be vitalised. This provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) Cr.P.C., the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition

precedent for arrest as envisaged under Section 41 Cr.P.C. has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid."

[10] In view of above and considering the principles laid down by the Apex Court in the case of **Arnesh Kumar (Supra)**, this court is inclined to direct thus:-

- (i) that, the police may resort to the extreme step of arrest only when the same is necessary and the appellant fails to cooperate in the investigation.
- (ii) that, the appellant should first be summoned to cooperate in the investigation. If the appellant cooperates in the investigation then the occasion of his arrest should not arise.

[11] With the aforesaid directions, the present Criminal Appeal stands disposed of.

Certified copy/ e-copy as per rules/directions.

(Rajeev Kumar Shrivastava)
Judge

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