

**The High Court Of Madhya Pradesh**  
**MCRC-10046-2021**

*(VIKRAM SINGH Vs THE STATE OF MADHYA PRADESH)*

**Gwalior, Dated:-22/02/2021**

Shri Vinod Kumar Dhakad, learned counsel for the applicant.

Shri Nitin Goyal, learned Panel Lawyer for the respondent/State.

I.A. No.5411/2021, an application for urgent hearing is taken up, considered and allowed for the reasons mentioned therein.

The applicant has filed this first bail application u/S.438 of Cr.P.C for grant of anticipatory bail.

Applicant is apprehending his arrest for the alleged offences registered at Crime No.38/2021 at Police Station Dharnawada, District Guna for the offence punishable under Sections 354, 341, 294, 506 of I.P.C.

Learned counsel for the applicant-**Vikram Singh** submits that applicant has not committed any offence. He has been falsely implicated and the age of applicant is 44 years and the age of prosecutrix is around 36 years. It is further submitted that there was no incidence was happening in the manner and there is no criminal antecedents against the present applicant. Hence, prayed to grant benefit of anticipatory bail to the applicant 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]**.

Learned Panel Lawyer for the respondent/State opposed the

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prayer and has submitted that the offence is registered under Sections 354, 341, 294, 506 of I.P.C. wherein, the offence committed by the applicant is serious in nature. Hence, prayed for rejection of this anticipatory bail application.

Heard learned counsel for the parties and considered the arguments advanced by them and perused the record.

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.

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

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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 CRA4936/2020 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."

In view of above, present appeal is disposed of in the light of

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law laid down by Hon'ble Apex Court in the case of Arnesh Kumar (supra).

Prosecution is hereby directed to comply with the direction issued by the Hon'ble Apex Court in Arnesh Kumar (supra) in its letter & spirit.

Certified copy as per rules.

**(Rajeev Kumar Shrivastava)**  
**Judge**

*Monika*