

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

:SINGLE BENCH:

{HON'BLE SHRI JUSTICE ANAND PATHAK}

MISCELLANEOUS CRIMINAL CASE NO.45008/2021

Chironjilal Kushwah
Vs.
State of Madhya Pradesh

Shri Sanjay Bahirani, learned counsel for applicant.
Shri Kuldeep Singh, learned Public Prosecutor for respondent/State.

Whether approved for reporting : Yes

Law laid down:

1. Clause 16 of M.P. Public Distribution System (Control) Order, 2015 does not contemplate opportunity of hearing before registration of F.I.R. to the police. It contemplates opportunity of hearing before proceeding for suspension or revocation of shop allotment and not for registration of F.I.R.
2. Section 2 (i a) of the Essential Commodities Act 1955 refers definition of Collector which includes Additional Collector and such other officers not below the rank of Sub-Divisional Officer and since in exercise of power conferred by Section 3 read with Section 5 of the Act, 1955. Control Order 2015 came into existence in which definition of Collector is not provided, therefore, by implied incorporation, for the purpose of Control Order, 2015, Collector includes Sub-Divisional Officer also. Therefore, S.D.O. is competent to refer the matter for registration of F.I.R.
3. In second anticipatory bail application, no change in

circumstances exists and no miscarriage of justice has been caused under Control Order, 2015. Therefore, bail application is rejected. **H.N. Rishbud and another v. State of Delhi, A.I.R. 1955 SC 196** and **G.R. Ananda Babu Vs. State of Tamil Nadu, 2021 SCC OnLine SC 176** relied.

ORDER
(Passed on 16th day of September, 2021)

The applicant has filed this second bail application u/S.438 Cr.P.C for grant of anticipatory bail. The applicant is apprehending his arrest in connection with Crime No.176/2021 registered at Police Station Bhonti, District Shivpuri for the offence punishable under Section 420 of IPC and Section 3/7 of E.C. Act. The first anticipatory bail application was dismissed as withdrawn by this Court vide order dated 13.07.2021 passed in M.Cr.C.No.34260/2021.

2. It is the submission of the learned counsel for the applicant that this is his second visit under Section 438 of Cr.P.C. because he has been falsely implicated and has not committed any offence. Applicant is a salesman of a ration shop run by the Society. He raised point of authority of S.D.O. to refer the matter to the District Supply Officer for lodging F.I.R.. He also raised the point regarding opportunity of hearing although he fairly submits that notice was given and he filed the reply to the said notice. According to him, they have not considered his contents of reply.
3. Learned counsel for the applicant has replied upon the

judgment rendered by the Hon'ble Apex Court in the case of **Om Prakash Rajput Vs. State of M.P. & Others** reported in **2018 (1) MPWN 93**. Another point raised by the applicant is that the case be considered in the light of judgment rendered by the Apex Court in the case of **Arnesh Kumar Vs. State of Bihar and others** reported in **(2014) 8 SCC 273**. The applicant undertakes to cooperate in the trial.

4. Learned counsel for the respondent/State opposed the prayer and submitted that the Collector/S.D.O. is competent to issue such order and in the present case, he was given sufficient opportunity of hearing and after considering his reply, direction was given for registration of F.I.R.. Learned State counsel referred the judgment rendered by the Apex Court in the case of **G.R. Ananda Babu Vs. State of Tamil Nadu**, reported in **2021 SCC OnLine SC 176**. The offence under Section 420 of IPC is also available in the present case besides provisions of the Essential Commodities Act. Therefore, State counsel prayed for its rejection.

5. Heard learned counsel for the parties and perused the case diary.

6. In the case in hand, applicant raised the point regarding opportunity of hearing as per M.P. Public Distribution System (Control) Order 2015 (hereinafter referred as Control Order 2015) but the documents submitted by the applicant as well as in the case diary, it appears that show cause notice was given to the applicant. After recording of statements of all persons concerned including

statement of present applicant, matter was referred to the police for registration of F.I.R.. Ergo, opportunity of hearing was afforded to the applicant.

7. As such, Clause 16 of Control Order 2015 does not contemplate opportunity of hearing before registration of F.I.R. to the police. It contemplates opportunity of hearing before proceeding for Suspension or Revocation of shop allotment. Therefore, plea regarding non grant of opportunity of hearing does not support the case of applicant if it does not cause miscarriage of justice. Even otherwise in this regard the judgment rendered by the Hon'ble Apex Court in the case of **H.N. Rishbud and another v. State of Delhi, A.I.R. 1955 SC 196** is worth consideration because at this stage no miscarriage of justice has been caused to the applicant. Section 2 (i a) of the Essential Commodities Act, 1955 refers definition of Collector which includes Additional Collector and such other officers not below the rank of Sub-Divisional Officer and in exercise of power conferred by Section 3 read with Section 5 of the Essential Commodities Act, 1955, M.P. Public Distribution System (Control) Order, 2015 came into existence. In the said Control Order, definition of Collector is not provided. Therefore, by implied incorporation for the purpose of order under M.P. Public Distribution System (Control) Order, 2015, Collector includes Sub-Divisional Officer also. Therefore, S.D.O. is competent to refer the matter for registration of F.I.R. As such, S.D.O. acts as informant only, nothing else.

8. In the case of **G.R. Ananda Babu (supra)**, Apex Court has deprecated the practice of granting anticipatory bail on second visit on flimsy pretext or on the specious reason of change in circumstances cannot be invoked for successive anticipatory bail applications once it is rejected by a speaking order and that too by the same judge.

9. In the cumulative analysis, case of the applicant *sans merits* and is hereby **dismissed**.

10. So far as the ground regarding the case of **Arnesh Kumar (supra)** is concerned, it is subjective satisfaction of the police authorities as per Section 41 of Cr.P.C.. They are expected to proceed in accordance with law and as per the mandate of Apex Court.

11. Dismissed.

Certified copy as per rules.

(Anand Pathak)
Judge

AK/-