

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KUMAR AGARWAL

ON THE 13th OF MAY, 2022

MISC. CRIMINAL CASE No. 23659 of 2022

Between:-

- 1. JAHENDRA RAWAT @ LALLO S/O PAHALWAAN SINGH RAWAT , AGED ABOUT 32 YEARS, OCCUPATION: FARMER VILL LITHORA PS DEHAT DABRA (MADHYA PRADESH)**
- 2. AVTAAR RAWAT S/O SHRI MAHENDRA SINGH RAWAT , AGED ABOUT 32 YEARS, OCCUPATION: FARMER VILLAGE LITHORA POLICE STATION DEHAT DABRA (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI SOHIT MISHRA, ADVOCATE)

AND

THE STATE OF MADHYA PRADESH INCHARGE POLICE STATION P.S. DARBA DEHAT (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI PRAMOD PACHORI, PUBLIC PROSECUTOR)

This application coming on for hearing this day, the court

passed the following:

ORDER

This is first bail application u/S.438 Cr.P.C filed by the applicants for grant of anticipatory bail.

Applicants apprehend arrest in connection with offences punishable u/Ss.365, 341, 342, 294, 323, 34 of IPC registered as Crime No.80/2022 at Police Station Dabra Dehat District Gwalior(M.P.).

Facts of the case for disposal of this application are that complainant Rajendra Rawat lodged a written computerized complaint at Police Station Dabra Dehat at 3 pm against present applicant accused Jahendra Rawat and five others alleging that on 2.4.22 at 6:40 pm, he alongwith his son Akash @ kallu were going to village Lidhora by their motorcycle to see Mela. There accused Avtar @ Golu applicant accused Jahendra @ Lallo on their motorcycle met them. Due to previous enmity, they stopped their way and started abusing them with filthy languages and started doing marpeet with with his son Akash. Meanwhile accused Devendra @ Lalla came over there on his Safari vehicle bearing registration No. MP07 4441 in which accused Yogendra and two others persons were sitting. They kidnapped his son Akash @ Kallu

and took away. Rajkumar, Bharat and Manoj were present on the spot, they saw the incident. He searched his son but could not trace him. On his report aforesaid offence was registered. Afterwards accused persons did marpeet with Akash and in unconscious state left him in forest. He informed his family members.

From the side of applicants-accused, it is submitted that FIR lodged by cousin of applicant accused Harshita due to same incident of 2.4.22 at 5:30 pm has been filed. As per learned counsel on the same date of incident so called kidnaped Akash alongwith Raj and Bharat molested cousin sister of applicant-accused of which written complaint was lodged at P.S. Dabra Dehat. On that basis 354, 354 ञ, 506, 34 of IPC was registered. In counterblast of this crime, false FIR has been lodged against present applicant. In such circumstances, learned counsel for applicants prays for grant of anticipatory bail.

Per contra, learned counsel for the State opposed the

anticipatory bail application and prayed for its rejection.

After hearing learned counsel for the parties at length and considered the arguments advanced by them and perused the record, this court is of the opinion that no case for grant of anticipatory bail is made out.

The Hon'ble Supreme Court in the case of **Arnesh Kumar Vs. State of Bihar:[(2014) 8 SCC 273]** 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 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 subclauses (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."

In view of above, present anticipatory bail application is disposed of in the light of law laid down by Hon'ble Apex Court in the case of **Arnesh Kumar (supra)** with following directions.

(i) That, the police may resort to the extreme step of arrest only when the same is necessary and the applicants fail to cooperate in the investigation.

(iii) That the applicants should first be summoned to cooperate in the investigation. If the applicants cooperate in the investigation, then the occasion of their arrest should not arise.

With the aforesaid directions, the present first anticipatory bail application stands **disposed of**.

Certified copy as per rules.

(Deepak Kumar Agarwal)
Judge