

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE SATYENDRA KUMAR SINGH
ON THE 25th OF MAY, 2023
MISCELLANEOUS CRIMINAL CASE NO. 22437 OF 2023**

BETWEEN:-

**SMT. KIRAN SIKARWAR W/O SHRI
CHANDRAPRAKASH SIKARWAR, AGE 45 YEARS,
OCCUPATION SCHOOL SANCHALAK, R/O NEAR
KODERA HOUSE GALI NO. 2, SIKANDAR
KAMPOO, LASHKAR, GWALIOR (MADHYA
PRADESH)**

.....APPLICANT

(BY SHRI AJEET SINGH BHADORIYA – ADVOCATE)

AND

**STATE OF MADHYA PRADESH THROUGH
POLICE STATION MADHOGANJ, DISTRICT
GWALIOR (MADHYA PRADESH)**

.....RESPONDENT

*This application coming on for admission this day, the Court
passed the following:*

ORDER

This is first application filed under Section 438 of Cr.P.C. for grant of anticipatory bail to the applicant, as she is apprehending her arrest in connection with Crime No.190/2023 registered at Police Station – Madhoganj, District Gwalior (M.P.) for offence punishable

under Section 420 of IPC.

Prosecution story, in brief is that on 26.04.2023 complainant submitted a written complaint to Police Station Madhoganj to the effect that complainant had got admitted her daughter in Class 10th of K.P. Convent School, Madhoganj, Jagan Bhai Wali Gali, Lashkar, Gwalior through the present applicant. Complainant's daughter attended her classes regularly and she also attempted the exams, but her admission is not showing online. Complainant had given rupees thirty thousand to the applicant. On such act of the applicant, one year of complainant's daughter has spoiled and now the applicant is not returning the money of the complainant. After completion of investigation, an offence under Section 420 of IPC at Crime No.190/2023 was registered at Police Station Madhoganj District Gwalior against the applicant.

Learned counsel for the applicant submits that the applicant has been falsely implicated in the matter. Complainant had levelled the allegations on the applicant without any proof. The applicant never admitted the complainant's daughter in her school because the said school itself got recognition this year for class VIII. Learned counsel further submitted that the applicant will cooperate in the investigation and she will abide by all the conditions imposed by this Court, therefore, she may be enlarged on anticipatory bail.

Learned counsel for the respondent/State has opposed the application and submits that the applicant is not cooperating in the investigation. In support of the complainant, statements of other witnesses have also been recorded in the case. Hence, no indulgence in the matter of grant of anticipatory bail is made out.

Having considered rival submissions and nature of the allegation

alleged against the applicant and also the fact that the requirement of the custodial interrogation cannot be denied at this stage, **applicant is not entitled for anticipatory bail**. However, looking to the fact that the offence involved in the case are not punishable with more than 7 years of imprisonment and Section 41(1) of Cr.P.C. provides that the offences for which punishment prescribed is imprisonment for a term upto seven years, the accused may be kept in custody only if the condition enumerated under Section 41(1)(b)(ii) of Cr.P.C. exists. In the case of **Arnesh Kumar vs. State of Bihar & another [(2014) 8 SCC 273]**, the Apex Court has held as under:-

".....the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorize his further detention and release the accused.....".

Therefore, in view of the observations laid down in the judgement referred above, I deem it fit to direct as under :-

- (i) That, the police may resort to the extreme step of arrest only when the same is necessary and the applicant fails to cooperate in the investigation.
- (ii) That, the applicant should first be summoned to cooperate in the investigation. If the applicant cooperates in the investigation, then the occasion of their arrest should not arise.
- (iii) That, if the applicant-accused person is arrested and he wants to file application under Section 437 of Cr.P.C. for regular bail before lower Court, then they will be produced before the lower Court without any delay.

Lower Court is also directed to consider his bail application as expeditiously as possible, preferably, on the same day.

This application is **disposed off** with the aforesaid directions.

Certified copy, as per Rules.

(SATYENDRA KUMAR SINGH)
V. JUDGE

Abhi