

HIGH COURT OF MADHYA PRADESH, JABALPUR**BENCH AT INDORE****S.B.: Hon'ble Shri Justice Subodh Abhyankar****Miscellaneous Criminal Case No.22228/2020**

(Sonu @ Vikas Bhandari s/o Manoharlal Bhandari
Hemant Jain s/o Panchulal Jain
Smt. Jyoti Panwar w/o Rajesh Panwar
Jitendra Nuraniya s/o Dharamchand Nuraniya
Kantilal Bhandari s/o Phoolchand Bhandari
Versus
The State of Madhya Pradesh)

(Case was heard on 22nd June, 2021)

Counsel for the Parties : Mr. Anil Khare, learned Senior Counsel along with Mr. Kaushal Singh Sisodiya, learned counsel for the applicants.
Ms. Geetanjali Chourasia, learned Panel Lawyer for the respondent / State of Madhya Pradesh.
Mr. Pourush Ranka, learned counsel for the objector.
Mr. Chandra Prakash Purohit, learned counsel for Suresh Chandra Bhandari s/o Phool Chand Ji Bhandari, Power of Attorney Holder of Kantilal Bhandari s/o Phool Chand Ji Bhandari (petitioner No.5) (**IA No.8076/2020**).

Whether approved for reporting : Yes

Law laid down : The order dated 12.05.2020 passed by the Gwalior Bench of this Court in the case of **Balveer Singh Bundela v. State of Madhya Pradesh** (Miscellaneous Criminal Case No.5621/2020) cannot be followed in the light of the subsequent order passed by the Division Bench of this court passed in the case of **Arif Masood v. State of Madhya Pradesh** passed in Miscellaneous Criminal Case No.45501/2020 dated 27.11.2020.

Judgments referred to: (1) **Lavesh v. State (NCT of Delhi)** reported as **(2012) 8 SCC 73** as well as **State of Madhya Pradesh v. Pradeep Sharma** reported as **(2014) 2 SCC 171**.

Significant paragraph numbers : From 7 to 11

O R D E R

Post for

07.07.2021

(Subodh Abhyankar)
Judge

High Court of Madhya Pradesh, Jabalpur
Bench at Indore

Miscellaneous Criminal Case No.22228/2020

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ORDER

(Passed on this 7th day of July, 2021)

This is applicants' **first** application under Section 438 of Criminal Procedure Code, 1973 for grant of anticipatory bail, as the present applicants are apprehending their arrest in connection with Crime No.391/2019 registered at Police Station Rajgarh, Tahsil Sardarpur District Dhar (MP) for offence punishable under under Sections 420 and 409 read with Section 34 of the Indian Penal Code, 1860.

2. In brief, the facts of the case are that one Rajesh Victor, an Accounts Officer of the Cooperative Department, Dhar lodged an FIR on 30.08.2019 against the Office Bearers of Shri Rajendra Suri Sakh Sahakari Sanstha Maryadit Rajgarh for serious financial irregularities committed by them in disbursing the loan amount to its members and also while obtaining the Fixed Deposits from its

Members. The amount runs into crores of rupees.

3. Admittedly against the present applicants a proclamation has already been issued under Section 82 of the Code of Criminal Procedure, 1973.

4. Learned Senior Counsel for the applicants has relied upon a decision dated **12.05.2020** rendered by the Gwalior Bench of this Court in the case of **Balveer Singh Bundela v. State of Madhya Pradesh** passed in **Miscellaneous Criminal Case No.5621/2020** and it is submitted that in the aforesaid decision the Gwalior Bench has clearly laid down the law, after taking into consideration the decision rendered by the Supreme Court in the case of **Lavesh v. State (NCT of Delhi)** reported in **(2012) 8 SCC 73** as well as in the case of **State of Madhya Pradesh v. Pradeep Sharma** reported in **(2014) 2 SCC 171** and it is further submitted that while passing of the aforesaid order, this Court has also relied upon the decision of the Larger Bench of the Supreme Court in the case of **Gurbaksh Singh Sibbia v. State of Punjab** reported in **AIR 1980 SC 1632**. In such circumstances, learned Senior Counsel has prayed for grant of anticipatory bail.

5. Learned counsel for the respondent / State, on the other hand, has opposed the prayer.

6. On due consideration of the rival submissions and on perusal of the case diary including the documents filed by the

applicants, this Court finds that against the applicants the proclamation proceedings under Section 82 of the Code of Criminal Procedure, 1973 have already been concluded on 10.2.2020. Since it has not been challenged, it has already attained the finality and as such the correctness of the same cannot be gone into in this bail application.

7. On the question that whether an application for anticipatory bail can be allowed even when a proclamation under Section 82 of Cr.P.C. is made, it is found that, so far as the aforesaid decision rendered by the Gwalior Bench of this Court in the case of **Balveer Singh Bundela** (supra) is concerned, the same is of no avail to the applicants as the attention of this Court has also been brought to the order dated **27.11.2020** passed by the Division Bench of the Principal Bench of this Court in the case of **Arif Masood vs. State of Madhya Pradesh** passed in **Miscellaneous Criminal Case No. 45501/2020** wherein, the Court, after considering the decision rendered by the Supreme Court in the cases of **Lavesh vs. State** (supra) and **State of Madhya Pradesh vs. Pradeep Sharma** (supra) has held as under:-

“20. The next question is whether the applicant can be denied bail only because he is absconding. In Lavesh (supra), the Apex Court dealt with this issue as under:-

"12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as "absconder". Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or

concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."

21. In the case of Pradeep Sharma (supra), the principle laid down in Lavesch (supra) was followed. In the said case, it was brought to the notice of Supreme Court that a proclamation under Section 82 of Code was already issued on 29.11.2012. We are unable to persuade ourselves with the argument of Shri Kaurav that in Pradeep Sharma (supra), the Apex Court has taken a different view than the view taken in Lavesch (supra). **In other words, it is not the ratio *decidendi* of Pradeep Sharma (supra) that anticipatory bail is not available to an absconder against whom a proclamation under Section 82 of the Code has not been issued.** In MCRC No. 9567/14, this Court declined anticipatory bail in the peculiar facts of the said case and by taking note of the fact that in spite of direction issued by High Court under Section 438(1-B) of the Code, the applicant remained absent, which shows lack of bonafides on his part. Similarly, in MCRC.No. 13420/14, in the peculiar factual backdrops of the said case, anticipatory bail was declined. In Muna Singh (supra), although learned Single Judge held that judgment of Supreme Court made it clear that an absconder against whom proceeding under Section 82 of the Code has been instituted is not eligible for the grace of the Court under Section 438 of Cr.P.C., we are unable to agree with this view taken by learned Single Judge. **At the cost of repetition, in Lavesch (supra) and Pradeep Sharma (supra), it was made clear that when the accused is absconding and also declared as a 'proclaimed offender', question of granting anticipatory bail does not arise. As a rule of thumb, it cannot be said that an absconder against whom a proclamation under Section 82 of Cr.P.C. is not issued, is not entitled to get anticipatory bail.**

22. Shri Kaurav during the course of hearing fairly admitted that the applicant has not been declared as 'proclaimed offender'. No such proclamation under Section 82 of the Code has been issued, although an application for issuance of proclamation was filed by the State.

23. Considering the aforesaid, we are of the opinion that anticipatory bail cannot be denied on the ground that the applicant is absconding. **More so, when it is shown that applicant has approached the Court below for grant of bail arising out of second FIR dated 04.11.2020 and after rejection of bail application from Court below, filed instant application with quite promptitude on 09.11.2020.**"

(emphasis supplied)

8. Since the Division Bench's order is subsequent to the order passed by the Single Bench in the case of *Balveer Singh*

(supra) and the Division Bench has also taken note to both the cases of **Lavesh and Pradeep** (supra), the decision rendered by this Division Bench is binding on this Court. In view of the same, decision in the case of **Balveer Singh Bundela** (supra) cannot be followed and is of no avail to the applicants.

9. This Court also finds that even otherwise, other co-accused persons' application under Section 482 of the Code of Criminal Procedure for quashing of the FIR, was dismissed by this Court in **Miscellaneous Criminal Case No.41268/2019** vide order dated **04.02.2020** and the same was challenged before the Supreme Court in **Petition for Special Leave to Appeal (Criminal) No.2579/2020** which also came to be dismissed on **17.06.2020** with the following observations: -

“This Special Leave Petition arising out of High Court judgment for quashing of FIR is rejected.

However, the petitioners are at liberty to take recourse to other appropriate remedies as may be permissible in law, including to apply for regular bail.

No coercive action be taken against the petitioners for a period of two weeks to enable them to surrender before the concerned Court and apply for regular bail. If the petitioners give advance notice of 48 hours to the public prosecutor before moving the bail application, the trial court may consider the bail application preferably on the same day. Needless to observe that the bail application be decided on its own merits without being influenced by any observation in the impugned judgment. All contentions and remedies available to the petitioners are left open.

The Special Leave Petition is dismissed accordingly.

Pending applications, if any, stand disposed of.”

10. Thus, the other accused persons who had filed the SLP

have also got no relief from the Supreme Court except that they can surrender before the lower Court and apply for grant of regular bail before the lower Court. It is true that two weeks breathing time was granted to the petitioners but that was on 17.06.2020 and it has been more than one year since then. In such circumstances, in the present case, this Court is not inclined to allow the anticipatory bail application. Accordingly, Miscellaneous Criminal Case No.22228/2020 is hereby **dismissed**.

11. However, Shri Khare, learned senior counsel has also submitted that if his arguments are not accepted, then the applicants be allowed to surrender before the trial court, in such circumstances, the applicants shall be at liberty to surrender before the trial Court; and if they surrender before the trial Court within a period of one week from the date of receipt of certified copy of this order, their application for regular bail shall be decided by the learned Judge of the trial Court, in accordance with law as expeditiously as possible.

Certified copy, as per rules.

(Subodh Abhyankar)
Judge