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M.Cr.C. No. 19962-2021

THE HIGH COURT OF MADHYA PRADESH, INDORE BENCH

SINGLE BENCH

Miscellaneous Criminal Case No. 19962 / 2021

Amit Dwivedi s/o Sheshmani Dwivedi

vs.

State of Madhya Pradesh

Coram :

Hon'ble Shri Justice Subodh Abhyankar

Shri Manish Dutt, learned senior counsel with Dhananjay Chaturvedi
for the applicant.

Ms. Poorva Mahajan, learned Panel Lawyer for the respondent/State.

Whether approved for reporting : **Yes**

ORDER

(Passed on 01st of July, 2021)

This is the applicant's first application under Section 438 Cr.P.C, for grant of anticipatory bail as he is apprehending his arrest in connection with Crime No.06/2020, registered at Police Station-Depalpur, District-Indore for commission of the offence punishable under Sections 420, 467, 468, 471 and 120-B of the IPC.

2. Learned senior counsel has argued at length and also on the point that the application for anticipatory bail is maintainable despite

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an order under Section 82 of the Cr.P.C. wherein an accused is declared as proclaimed offender is maintainable. It is also contended that the order passed under s.82 of Cr.P.C. is also bad in law. Learned senior counsel has relied upon the decision rendered by the Gwalior Bench of this Court in the case of **Balveer Singh Bundela vs. State of Madhya Pradesh** passed in M.Cr.C.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 of the decision rendered by the Supreme Court in the case of **Lavesh vs. State (NCT of Delhi)** reported in **(2012) 8 SCC 73** as well as in the case of **State of Madhya Pradesh vs. 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 vs. State of Punjab** reported in **AIR 1980 SC 1632**. In such circumstances, learned senior counsel has prayed for grant of anticipatory bail.

3. Learned counsel for the State, on the other hand, has opposed the prayer.

4. On due consideration of the rival submissions and on perusal of the case diary including the documents filed by the applicant, this Court finds that, against the applicant the proclamation proceedings

under Section 82 of the Cr.P.C. 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.

5. On the question that an application for anticipatory bail is maintainable 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 applicant as the attention of this Court has also been brought to the order 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 M.Cr.C.No. 45501/2020 dated 27.11.2020 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 Lavesh (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 Lavesh (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 Lavesh (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)

6. 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 applicant.

7. This Court also finds that the proclamation under Section 82 of Cr.P.C. is made against the applicant on 10.2.2020, whereas his application for anticipatory has been dismissed by the trial court on 25.1.2021 and as such it is apparent that the applicant has been able to successfully avoid the warrants issued to him until now. The approach of the applicant to seek the legal remedy is quite lackadaisical and, therefore, dis-entitles him the benefit of anticipatory bail.

8. In view of the aforesaid, the present M.Cr.C. stands dismissed as being devoid of merits. However, it is also directed that, if the applicant surrenders before the trial court within a week time from the date of receipt of the certified copy of this order, his application for regular bail may be considered by the learned Judge of the trial court as expeditiously as possible.

Certified copy, as per rules.

(Subodh Abhyankar)
Judge

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THE HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

M.Cr.C. No. 19962-2021

(Amit Dwivedi s/o Sheshmani Dwivedi Vs. State of M.P.)

Indore, Dated: 22/06/2021

Heard through video conferencing.

Shri Manish Dutt, learned senior counsel with Shri Dhananjay Chaturvedi, learned counsel for the applicant.

Ms. Poorva Mahajan, learned Panel Lawyer for the respondent/State.

Arguments heard.

Reserved for order.

**(Subodh Abhyankar)
Judge**

Indore, Dated: 01/07/2021

Order passed, signed and dated.

**(Subodh Abhyankar)
Judge**

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M.Cr.C. No. 19962-2021

THE HIGH COURT OF MADHYA PRADESH, INDORE BENCH

Single Bench : Hon'ble Shri Justice Suborder Abhyankar

M.Cr.Case No.19962/2021

Amit Dwivdi s/o Sheshmani Dwivedi vs. State of M.P.

- 1 Case No. M.Cr.C.No.19962 of 2021
- 2 Parties Name Amit Dwivdi s/o Sheshmani Dwivedi
vs.
State of Madhya Pradesh
- 3 Date of Order 01st of July, 2021
- 4 Bench constituted of Single Bench
Hon'ble Justice Hon'ble Shri Justice Subodh Abhyankar
- 5 Order passed by Hon'ble Shri Justice Subodh Abhyankar
- 6 Whether approved for Yes
reporting
- 7 Name of counsel for Shri Manish Dutt, learned senior counsel for
the applicant with Shri Dhananjay
parties Chaturvedi, learned counsel for the applicant.

Ms. Poorva Mahajan, learned Panel Lawyer
for the respondent /State.
- 8 Law laid down The order dated 12.5.2020 passed by the
Gwalior Bench of this Court in the case of
Balveer Singh Bundela vs. State of M.P.
(M.Cr.C.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 vs. State of**
Madhya Pradesh passed in
M.Cr.C.No.45501/2020 dated 27.11.2020
- 9 Significant paragraph 5, 6 & 7