

HIGH COURT OF MADHYA PRADESH, JABALPUR**BENCH AT INDORE****S.B.: Hon'ble Shri Justice Subodh Abhyankar****Miscellaneous Criminal Case No.4730/2021**

(Smt. Kantabai w/o Ashok Bhandari

Versus

The State of Madhya Pradesh)

(Case was heard on 22nd June, 2021)

Counsel for the Parties : Mr. Vikas Rathi, learned counsel for the applicant.
Ms. Geetanjali Chourasia, learned Panel Lawyer for the respondent / State of Madhya Pradesh.
Mr. Pourush Ranka, learned counsel for the objector.

Whether approved for reporting : Yes

Law laid down : Section 82 (4) of Criminal Procedure Code for declaring an accused as a proclaimed offender is identical to Section 82 (1) of the Code. The only difference is the penal provisions for the same as provided under s.174A of IPC. **The general principle that Lavesh v. State (NCT of Delhi) reported as (2012) 8 SCC 73 lays down is that *for the purposes of an anticipatory bail*, a proclaimed offender also includes an offender or a proclaimed person against whom a proclamation u/s.82 (1) of Cr.P.C. has also been issued.**

Judgements relied upon by counsel for the applicant 1. **Sanjay Sarin** versus **State (Union Territory, Chandigarh)**, 2. **RahulDutta v. State of Haryana**, 3. **Rishabh Seth v. State of Rajasthan & another** and 4. **Satinder Singh v. The State of U.T. Chandigarh & another(supra)**; were distinguished.

Judgment relied upon: **Lavesh v. State (NCT of Delhi)** reported as (2012) 8 SCC 73 .

Significant paragraph numbers : From 05 to 10

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.4730/2021

(Smt. Kantabai w/o Ashok Bhandari
Versus
The State of Madhya Pradesh)

* * * * *

Mr. Vikas Rathi, learned counsel for the applicant.

Ms. Geetanjali Chourasia, learned Panel Lawyer for the respondent /
State of Madhya Pradesh.

Mr. Pourush Ranka, learned counsel for the objector.

* * * * *

ORDER

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

This is applicant's (repeat) **second** application under Section 438 of Criminal Procedure Code, 1973 for grant of anticipatory bail, as the present applicant is apprehending his / her arrest in connection with Crime No.391/2019 registered at Police Station Rajgarh, Tahsil Sardarpur District Dhar (MP) for offence punishable under Sections 409 and 420 read with Section 34 of the Indian Penal Code, 1860. The earlier anticipatory bail application of the applicant Miscellaneous Criminal Case No.9537/2020 was dismissed on 03.03.2020 by this court as not pressed, as the counsel had no instructions.

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

3. Shri Rathi has also submitted that the applicant is not declared as a *proclaimed offender* u/s.82(4) of Cr.P.C. which is a prerequisite to declare a person a proclaimed offender as the applicant has not been charged with any of the sections as provide under s.82(4) of Cr.P.C. which include sections 302, 304, 364, 367,382, 392, 393, 394, 395, 396, 397,398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860) as the applicant is charged under Sections 409 and 420 read with Section 34 of IPC only. In support of his contentions, shri Rathi has relied upon the following decisions: -

1. **Sanjay Sarin v. State (Union Territory, Chandigarh)** reported as (2013) Cri. L.J. 408,
2. **Rahul Dutta v. State of Haryana** reported as 2012 (2) R.C.R. (Criminal) 585,
3. **Rishabh Seth v. State of Rajasthan & another** decision dated 08.03.2018 in **Criminal Miscellaneous (Petition) No.5767/2017** of Rajasthan High Court (Jaipur Bench) and
4. **Satinder Singh v. The State of U.T. Chandigarh & another** reported as 2011 (2) R.C.R. (Criminal) 89.

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

5. 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 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. So far as the contentions raised by shri Rathi that an accused can be declared as proclaimed offender only in terms of s.82(4) of Cr.P.C. is concerned, this court does not find any merits in said claim, this is for the reasons that even when a proclamation is made u/s.82(1) of Cr.P.C., it is also a declaration that the accused has absconded and against whom a publication is made. The procedure adopted u/s.82(4) of Cr.P.C. is no different than the procedure adopted u/s.82(1) of Cr.P.C. The only difference is the penal provisions for the same as provided under s.174A of IPC which reads as under:-

“174-A. Non-appearance in response to a proclamation under Section 82 of Act 2 of 1974.—Whoever fails to appear at the specified place and the specified time as required by a proclamation published under subsection (1) of Section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to *three years* or with fine or with both, and where a declaration has been made under subsection (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to *seven years* and shall also be liable to fine.]”

6. Thus, this court finds that the distinction between s.82(4) and s.82(1) of Cr.P.C. is that u/s.82(4), the sections of IPC which have been enumerated are 302, 304, 364, 367,382, 392, 393, 394, 395,

396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 only and although the reason behind this classification is not known, for the violation of s.82(4) of Cr.P.C. the imprisonment is upto seven years and fine, whereas, all the other offences, excepting those provided u/s.82(4) of IPC have penal consequences of imprisonment upto 3 years and fine only and such offences would include, inter alia, s.498A, 304B of IPC. This analogy is also vindicated by the decision in the case of **Lavesh v. State (NCT of Delhi)** reported in **(2012) 8 SCC 73** which is not a case under any of the sections as provided u/s.82(4) of Cr.P.C. which can be ascertained from the facts of that case, the relevant para of Lavesh (supra) reads as under:-

“3. On 19-1-2010, the younger brother of the appellant got married to Vibha (since deceased). He lived with his wife on the first floor of the same house. On 1-9-2011, Vibha committed suicide. On the same day, the mother of the deceased lodged a complaint against the family members of the husband of the deceased with Police Station Punjabi Bagh, New Delhi.

4. On the basis of the complaint, an FIR was registered vide No. 259 of 2011 at Punjabi Bagh Police Station. On the same day, the husband and the mother-in-law of the deceased were arrested. The appellant herein moved an application for anticipatory bail. The Additional Sessions Judge, Delhi, by order dated 5-11-2011, dismissed the said application.

XXXXXXXXXXXXXXXXXXXX

10. According to the prosecution, if we look into all the above particulars coupled with the supplementary statements, it has been clearly made out, particularly, insofar as the appellant is concerned, that there was a definite allegation against him. **Further, the appellant and other family members subjected the deceased to cruelty with a view to demand dowry, right from the date of marriage and also immediately before the date of her death.”**

(emphasis supplied)

7. Apparent from the above, the offences in the Lavesh’s case were under s.498A/304B of IPC, which has also been verified by this court from the original order passed by the Delhi High court itself in the case of **Lavesh vs. State NCT of Delhi**, passed in Bail

Application No.1602/2011 dated 05.12.2011. Interestingly, both these sections are not to be found under s.82(4) of IPC which includes sections 302, 304, 364, 367,382, 392, 393, 394, 395, 396, 397,398, 399, 400, 402, 436, 449, 459 or 460 of IPC, in such circumstances, it only leads to one and only logical conclusion that in *Lavesh's* case, the Supreme Court has not distinguished between a proclamation under s.82(1) of Cr.P.C. and s.82(4) of Cr.P.C. and the general principle that appears is that *for the purposes of an anticipatory bail*, a proclaimed offender also includes an offender or a proclaimed person against whom a proclamation u/s.82(1) of Cr.P.C. has also been issued.

8. The decisions relied upon by shri Rathi, viz.: - 1. **Sanjay Sarin** versus **State (Union Territory, Chandigarh)**, 2. **Rahul-Dutta v. State of Haryana**, 3. **Rishabh Seth v. State of Rajasthan & another** and 4. **Satinder Singh v. The State of U.T. Chandigarh & another(supra)**; are also distinguishable as they only deal with the issue that whether any offender not falling under the purview of s.82(4) of CRPC can still be declared as proclaimed offender, but none of these decisions have dealt with an anticipatory bail u/s.438 of Cr.P.C. and have dealt with the matter u/s.482 of Cr.P.C. wherein only the correctness of an order passed by the trial court u/s.82(4) of Cr.P.C. was under challenged in which the trial court had declared the offender as proclaimed offender under sections other than

enumerated u/s.82(4) of Cr.P.C. Thus, on the aforementioned discussion, this court is of the considered opinion that the contentions raised by shri Rathi's have no merits and are hereby rejected.

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 **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.4730/2021 is hereby **dismissed**.

11. Accordingly, Miscellaneous Criminal Case No.4730/2021 is hereby dismissed. However, the applicant shall be at liberty to surrender before the trial Court; and if he / she surrenders before the trial Court within a period of one week from the date of receipt of certified copy of this order, then the same shall be decided by the learned Judge of the trial Court, in accordance with law as expeditiously as possible.

(Subodh Abhyankar)
Judge