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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA
ON THE 21st OF SEPTEMBER, 2023**

MISC. CRIMINAL CASE No. 24427 of 2023

BETWEEN:-

**PRAMOD SETHI S/O SHRI DARSHAN LAL SETHI R/O 01
GULMOHAR EXTENSION INDORE (MADHYA PRADESH)**

.....APPLICANT

**(BY SHRI PUNEET JAIN - ADVOCATE WITH SHRI UMANG MEHTA AND
SHRI HARSHIT SHARMA - ADVOCATES)**

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH P.S. TUKOGANJ (MADHYA
PRADESH)**

.....RESPONDENT

(BY SHRI TARUN PAGARE - G.A.)

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

ORDER

This is second application u/S.438 of Cr.P.C for grant of anticipatory bail to the applicant in connection with Crime No.307/2020 registered at P.S Tukoganj, Indore for offence punishable u/Ss.420, 406 and 34 of IPC and u/S.6(1) of the M.P. Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000 (hereinafter referred to as "Adhiniyam"). The first application was filed jointly with co-accused with Raghav Sethi vide M.Cr.C.No.33001/2022. The said application was withdrawn with liberty to file separate application for the applicants. The application was dismissed with the aforesaid liberty. Thereafter the present application has been filed separately on behalf of the

applicant Pramod Sethi.

2. An objection has been raised regarding maintainability of anticipatory bail application in view of the provisions of Sec.14 of Adhiniyam, 2000. The provisions of Sec.14 of the Act reads as under:-

"14 - Anticipatory bail not be granted - Notwithstanding anything contained in Sec.438 of Code of Criminal Procedure 1973 (No.2 of 1974), no Court shall grant anticipatory bail to any person under the Act."

3. Counsel for applicant submits that the para materia provisions under the similar Act in State of Chhattisgarh has been considered by the division bench of High Court of Chhattisgarh, Bilaspur in WP(Cr.) No.141/2023 after referring to the various judgments of the Supreme Court in the case of *Hema Mishra Vs. State of U.P. & ors. (2014) 4 SCC 453* and also the judgment passed in the case of *Prathviraj Chauhan Vs. Union of India (2020) 4 SCC 727* and it has been held that there is no absolute bar for grant of anticipatory bail. The para materia provision of Sec.15 of the Chhattisgarh Protection of Depositors Interest Act, 2005 reads as under:-

"15 - Anticipatory bail not to be granted - Notwithstanding anything contained in Section 438 of the Code of Criminal Procedure 1973 (No.2 of 1974), no application for anticipatory bail shall lie for an offence punishable under the Act."

4. Upon perusal of the provisions of Sec. 14 of M.P. Act of Adhiniyam 2000 and Sec.15 of Act 2005, it is evident that the provisions are almost para materia.

5. The relevant paragraphs of the judgment of Division Bench of Chhattisgarh High Court are reproduced as under:-

"12. By virtue of Section 15 of the Act of 2005, no application for anticipatory bail would lie for an offence punishable under the Act of 2005, as the provisions of the Act of 2005 would have overriding effect over Section 438 of the CrPC. Right of the accused in anticipatory bail is definitely a most essential safeguard for liberty of a person and it is necessary to meet the obvious cases of misuse of police power. Section 15 of the Act of 2005 bars the application of Section 438 of the CrPC for grant of anticipatory bail for an offence punishable under the Act of 2005. However, their Lordships of the Supreme Court in umpteen number of cases have held that where prima facie case is not made out, the Court is not bereft of its power to grant benefit of anticipatory bail in appropriate cases of exceptional nature.

13. In the matter of Prathvi Raj Chauhan v. Union of India and others' (2020) 4 SCC 727 while examining challenge to the constitutionality of Section 18-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Act of 1989'), their Lordships of the Supreme Court have examined the scope of Section 18 of the Act of 1989 also with particular reference to maintainability of application for grant of anticipatory bail under Section 438 of the CrPC as against statutory bar created under Section 18 of the Act of 1989 and it has been held that despite such a statutory bar created, such a bar may not come in the way for grant of anticipatory bail by taking recourse to the provision contained in Section 438 of the CrPC where complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989. It was observed as under:

"11. Concerning the applicability of provisions of Section 438 CrPC, it shall not apply to the cases under the 1989 Act. However, if the complaint does not make out a prima facie case for applicability of the provisions of the 1989 Act, the bar created by

Sections 18 and 18-A(i) shall not apply. We have clarified this aspect while deciding the review petitions."

In separate but concurring judgment rendered by S. Ravindra Bhatt, J., also it was held as under:

"33. I would only add a caveat with the observation and emphasize that while considering any application seeking pre-arrest bail, the High Court has to balance the two interest: i.e. that the power is not used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament."

15. Reverting finally to the facts of the present case in light of the principles law laid down by their Lordships of the Supreme Court in the aforesaid judgments, it is quite vivid that where no prima facie material exists warranting arrest in complaint or where the complaint does not make out a prima facie case under the Act of 2005, the concerned Court will have power and jurisdiction to consider the application for grant of anticipatory bail in appropriate case exceptional nature and in that case, bar under Section 15 of the Act of 2005 would not come in way to consider the application under Section 438 of the CrPC. Accordingly, we clarify the legal position."

6. In the case of *Prathviraj Chauhan* (supra), the Apex Court has taken into consideration the bar of anticipatory bail u/S.18 and 18-A under Scheduled

Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and held that there is no absolute bar for grant of anticipatory bail if no prima facie case is made out against the applicant from the complaint.

7. On the basis of aforesaid judgments, the Chhattisgarh High Court has held in para 15 that where prima facie case is not made out, the court will have the power to grant benefit of anticipatory bail in appropriate cases of exceptional nature. In para 15 it is held that as per the judgment of the Supreme Court, it is quite vivid where no prima facie material except warranting arrest in complaint or where the complaint does not make out a prima facie case under the Act 2005, the concerned Court will have power and jurisdiction to consider the application for grant of anticipatory bail in appropriate case of exceptional nature and in that case bar u/S.15 of the Act 2005 would not come in way to consider the application u/S.438 of Cr.P.C.

8. The constitutional validity of provisions u/S.59-A(1) of the M.P. Excise Act, 1915 providing a bar for grant of anticipatory bail, was considered in a case of *Naresh Kumar Lahria Vs. State of M.P. & Ors. WP No.6897/2000 decided on 15.9.2003* by division bench of this court. In the said case Their Lordships considered the validity, constitutionality and validity of the provisions of Sec.59-A of the Excise Act and held that there is no absolute bar of grant of anticipatory bail if the complaint prima facie does not make out any case.

9. In view of the aforesaid enunciation of law, I am of the considered view that the application for anticipatory bail is maintainable and the bar u/S.14 of the Adhiniyam 2000 would not apply in the cases where no prima facie material exists warranting arrest in the complaint and where the complaint does

not make out a *prima facie* case. The Court has power and jurisdiction to consider the application for grant of anticipatory bail in appropriate case of exceptional nature and the bar u/S.14 would not come in the way to consider the application u/S.438 of C.P.C.

10. Thus, the objection of learned counsel for State that anticipatory bail application is not maintainable is rejected.

11. Now, this Court has to advert to the merits of the case.

12. As per the prosecution a complaint was made by Himanshu Sharma and others alleging that the applicant and the other co-accused persons are Directors of the company and they are involved in Real Estate and construction business. It is alleged that the present applicant had persuaded the complainants to make investment in their project and to become partners of the said project and they will get the fixed profit. On the assurance of the applicant who is Director of the company, the amounts were transferred to the account of the Directors of the company. Some payments were made by the Directors but thereafter they stopped the payment and despite completion of the project, the fixed profit was not granted to the complainants.

13. Counsel for applicant submits that no amount has been transferred in the account of the applicant and the payments were made individually to Rohan Sethi and Raghav Sethi who happens to be his sons and Directors of the company. There is no payment made to the account of the applicant and, therefore, *prima facie* there is no material against the applicant and as per the definition of Sec.2(b) and 2(c) of the Adhiniyam, no case is made out and the provisions of the Act would not apply to the case of the present applicant. It is further submitted that the applicant has co-operated with the investigation and his statement was also recorded. It is further submitted that on similar

complaint made by Nita Bhandari, the police has closed the case on the ground that the dispute was of civil nature. The charge sheet in respect of the other co-accused persons has already been filed and one of the co-accused person Rohan Sethi has been granted regular bail by the Apex Court.

14. Counsel for State opposed the prayer for grant of anticipatory bail and submits that the FIR is lodged by name. The applicant is one of the Director of the company. As per the complaints and FIR, there is specific allegation by Himanshu Sharma that on the assurance of the applicant he had made payment to the account of the present applicant by City Bank Cheque No. 430968/RTGS No. CITIHI 6096881142 on 5.4.2016 and the applicant has issued the receipt in this regard. It is also submitted that in the statement u/S.161 Cr.P.C. Himanshu Sharma has made specific allegation that the applicant had issued cheque of closed account of Bank of Baroda towards payment of profit. He had intention to defraud the complainants and to cheat them. Thus, prima facie there is material against the applicant and it cannot be said that there is no prima facie allegation and material against the applicant. It is submitted that the allegation is in respect of huge amount involved in the present case is Rs.4,56,72,015/- . The investigation u/s.173(8) of Cr.P.C is still pending against the applicant. The applicant is habitual criminal and there is another case of similar allegations registered at Crime No.542/2021 at P.S. Tukoganj, Indore for commission of offence u/Ss.420, 409, 506 of IPC.

15. After hearing learned counsel for parties and taking into consideration the specific allegations made in the FIR by the complainant Himanshu Sharma and in his statement u/S.161 Cr.P.C, it cannot be held that no prima facie material is against the applicant. There is prima facie material

against the applicant in respect of cheating of huge amount of more than rupees four crore in the present case by getting deposits from the complainants. The applicant is facing another criminal case on similar charges. The alternative prayer of the applicant to direct the respondents to comply with the provisions of Section 41-A of Code of Criminal Procedure in the light of judgment passed by the Apex Court in the case of *Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273* has no merit as the counsel for the State submits that notice was issued to the applicant and his statement was recorded before registering the offence. The applicant is absconding since long. Thus, the present case is not a case for grant of anticipatory bail.

16. The application is **dismissed**.

VM

(VIJAY KUMAR SHUKLA)
JUDGE

