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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

ON THE 12th OF APRIL, 2024

MISC. CRIMINAL CASE No. 13221 of 2024

BETWEEN:-

1. **VIKAS S/O BASHANTILAL PATIDAR, AGED ABOUT 49 YEARS, OCCUPATION: AGRICULTURE R/O VILALGE HARSOL NARAYANGARH TEHSIL MALHARGARH DISTT. MANDSAUR (MADHYA PRADESH)**

2. **SUBHASHCHANDRA S/O ASHOK KUMAR PATIDAR, AGED ABOUT 49 YEARS, OCCUPATION: LABOUR VILLAGE NARAYANGARH, TEHSIL MALLAHARGARH DISTRICT MANDSAUR (MADHYA PRADESH)**

.....APPLICANT

(SHRI HIMANSHU THAKUR, ADVOCATE)

AND

THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THROUGH POLICE STATION PIPLIYAMANDI DISTT. MANDSAUR (MADHYA PRADESH)

.....RESPONDENT

(SHRI H.S.RATHORE GOVT. ADVOCATE)

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

ORDER

1.This is the first anticipatory bail application filed under Section 438 of the Code of Criminal Procedure, 1973. The applicants are apprehending their arrest in connection with Crime No.238/2011, registered at P.S.- Pipaliyamandi, District Mandsaur (M.P.) for commission of offence punishable under Sections 8/15, 25, 29 of NDPS Act.

2. It is alleged that the applicants are involved in the aforesaid crime wherein 40 quintals and 65 kg of poppy straw is said to be seized.

3. Learned counsel for the applicants submits that the applicants are innocent and have falsely been implicated in this case. Other co-accused persons have been acquitted by the learned Trial Court and co-accused Ajay has been granted regular bail by this Court vide order dated 11.10.2023, passed in MCRC No. 45382/2023. The co-accused persons and the present applicants have been made accused only on the memorandum statement recorded under Section 27 of the Evidence Act. Counsel further placed reliance in the case of *Jagdish Vs. State of Madhya Pradesh* (MCRC No. 36357/2021, order dated 03.08.2021) and *Ramesh Chandra Vs. State of Madhya Pradesh* (MCRC No. 9910/2024, order dated 18.03.2024). Under these circumstances, he prays for grant of anticipatory bail to the applicants.

4. Learned counsel for the respondent/State opposes the prayer and prays for its rejection by submitting that the applicants are absconded from the year 2011. It is vehemently submitted that the accused persons are absconded and have not cooperated the investigation as well as the trial, anticipatory bail may not be granted to the applicants.

5. Heard learned counsel for both the parties and perused the record.

6. From the face of record, it is clear that this case is related to NDPS Act, hence, only on the basis of the fact that the co-accused has been granted regular bail or co-accused persons have been acquitted by the Trial Court, the applicants cannot be released on anticipatory bail.

7. On this aspect, the Hon'ble Apex Court in the case of **Jai Prakash Singh vs. State of Bihar and others [2012 (4) SCC 379]** while canceling the

anticipatory bail of the applicant therein so granted concerned High Court, has clearly observed that:-

"13.....The anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail.

21.....The court may not exercise its discretion in derogation of established principles of law, rather it has to be in strict adherence to them. Discretion has to be guided by law; duly governed by rule and cannot be arbitrary, fanciful or vague. The court must not yield to spasmodic sentiment to unregulated benevolence. The order de hors the grounds provided in Section 438 Cr.P.C. itself suffers from non-application of mind and therefore, cannot be sustained in the eyes of law."

8. Now, coming to the argument of applicant that the applicant has been implicated only on the memorandum statement of co-accused person, on this aspect against the view of Hon'ble Apex Court in the case of ***The State of Haryana vs. Samarth Kumar (Criminal Appeal No.1005 of 2022)***, is worth referring here, wherein it has been held that:-

*"8. In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh Vs. State of Tamil Nadu reported in 2021(4) SCC 1, perhaps at the time of **arguing the regular bail application** or at the time of final hearing after conclusion of the trial.*

9. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High court fell into an error in granting anticipatory bail to the respondents."

9. On the point of absconsion, in the case of Lavesh Vs. State (NCT of

Delhi) reported in (2012) 8 SCC 730 in paragraph No.12 the Hon'ble Apex Court has held 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.”

10. In the case of State of M.P. Vs. Pradeep Sharma reported in (2014) 2 SCC 171, the Hon'ble Apex Court placing reliance upon the judgment of Lavesh (supra) has held that :-

“It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail.”

11. Relying upon the law laid down by the Hon'ble Apex Court in the case of Samarth Kumar (supra) and Tofan Singh Vs. State of Tamil Nadu, this court is of the considered opinion that although present applicants have been implicated as accused on the basis of disclosure statement given by other co-accused and no recovery was effected from them, but looking to the gravity of offence and nature of crime and the fact that the applicant is absconded, the present applicant does not deserve for anticipatory bail.

12. Accordingly this anticipatory bail application filed by applicant under section 438 of Cr.P.C. is hereby **dismissed**.

VD

