

**HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT
JABALPUR**

M.Cr.C NO.	63561/2021
Parties Name	SHEKHAR SARATHE VS. STATE OF M.P. AND OTHERS
Bench Constituted	Single Bench
Judgment delivered By	HON'BLE SHRI JUSTICE VISHAL DHAGAT
Whether approved for reporting	YES
Name of counsel for parties	For appellant: Shri P. C. Palliwal, Advocate For Respondent/State : Ms. Hemlata Kshatriya, P.L.

**(O R D E R)
24/01/2022**

- 1.** Applicant has filed this application under section 438 CrPC, for grant of anticipatory bail.
- 2.** Applicant was arrested in connection with Crime No.137/2021 by Police of Police Station Amarwara, District Chhindwara for commission of offence punishable under sections 354, 354-A, 354(D), 341 and 506 of IPC and was released on bail by order dated 17.2.2021. Later on an application was filed by complainant for cancellation of bail which was entertained by the court and bail was cancelled.
- 3.** Learned counsel for applicant submitted that Additional Sessions Judge, Amarwara, District Chhindwara vide its order dated 9.12.2021 exercising its power under

section 439(2) of CrPC, cancelled the bail granted to applicant. As applicant is under apprehension of his arrest after cancellation of bail, therefore, he has filed this application for grant of anticipatory bail.

4. Application for anticipatory bail can be filed by any person who has reason to believe that he may be arrested on accusation of having committed non-bailable offence. Applicant was enlarged on bail under section 439 CrPC. Thereafter an application was filed for cancellation of bail.

5. Application filed for cancellation of bail is not to be considered on merits of the case but same is to be considered if bail granted to accused has been misused. Court has to consider material evidence brought on record before it and thereafter takes a decision for cancellation of bail. Trial court had taken a decision for cancellation of bail to applicant on basis of evidence available before it and it was held that he had misused the bail granted to him as he had violated condition no.1, 3 & 4 of bail order dated 17.2.2021.

6. Before regular bail granted to an accused is cancelled, he is given opportunity to rebut the evidence produced before Court and establish that there is no violation of bail

order. Decision by Court is not taken on basis of accusation but on basis of materials available before it.

7. Application for grant of anticipatory bail filed by applicant is not maintainable when regular bail granted to accused is cancelled under section 439(2) of CrPC.

8. Anticipatory bail application is **dismissed** as non-maintainable.

(VISHAL DHAGAT)

JUDGE

mms