

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
UNDER S.C.R. ORDER XXII, RULE 2(1)
(Under Article 136 of the Constitution of India)

WITHPRAYER OF INTERIM RELIEF

SPECIAL LEAVE PETITION (CRIMINAL) NO. OF
2022

IN THE MATTER OF:
Between

Position of Parties

**Before the
Trial Court**

**Before the
High Court**

**Beforthe
Supreme
Court**

Umesh Upadhyay S/o
Annulal Upadhyay Age
about 42 years, Occupation
Pvt. Job, R/o Ward No 1,
Seth Ji ka Chaupada, near
Airtel tower, Moman
Badodiya, Dist Shajapur,
M.P.

Accused

Applicant

Petitioner

VERSUS

The State of Madhya Pradesh
Thr. SHO, Police
Station Berchha Shajapur,
Madhya Pradesh.

Prosecution Respondent

Respondent

To,
The Hon'ble Chief Justice of India
And His Companion Justices of the
Hon'ble Supreme Court of India

The Special Leave Petition of the Petitioner

MOST RESPECTFULLY SHEWETH: -

1. The present Special Leave Petition is preferred against the order dated 22.08.2022 passed by the Hon'ble High Court of Madhya Pradesh, Jabalpur, Bench at Indore Misc. Criminal Case No. 36625 of 2022, filed by the Petitioner seeking the anticipatory bail, which was dismissed by the High Court.

2. **QUESTIONS OF LAW:**

The following questions of law arise for consideration by this Hon'ble Court:

- A. Whether Ld Trial Court and Hon'ble High Court should have not considered the fact that the most essential part section 27 of the Evidence Act that the statement made before the police must lead to the recovery of the substance?
- B. Whether Ld Trial Court and Hon'ble High Court should have not considered the fact that the prosecution failed to establish any corroboration between the two accused and the Petitioner?

- C. Whether Ld Trial Court and Hon'ble High Court should have not considered the fact that the police could not produce any Call Details Records or any Trace any transactions which can establish any kind of role of the Petitioner in Crime No 39 of 2022?
- D. Whether Ld Trial Court and Hon'ble High Court should have not considered the fact that both the main accused have already been granted bail by the Hon'ble High Court?
- E. Whether the Hon'ble High Court should have not considered that though the Petitioner had withdrawn the earlier Application seeking Anticipatory Bail , but still he had a right to file Second Bail Application before the Hon'ble High Court under section 438?
- F. Whether Ld Trial Court and Hon'ble High Court should have not considered the fact that it is very easy to implicate anyone in the crime by misusing section 27 of the Evidence Act, and the onus remains on the prosecution to prove it in the Court of law with the help of some concrete evidence to implicate the suspect?
- G. Whether Ld Trial Court and Hon'ble High Court should have not considered the fact that life of the Petitioner will get ruined as it will be a big blow on his social as well as personal stature?

3. DECLARATION IN TERMS OF RULE 4(2)

The petitioner states that no other petition seeking leave to appeal has been filed by him against the final order dated 22.08.2022 passed by the High Court of Madhya Pradesh, at Jabalpur, in M.CR.C No. 36625 of 2022.

4. DECLARATION IN TERMS OF RULE 6

The annexure P-1 to P- produced alongwith the SLP are true copies of the pleadings/documents which found part of the records of the case in the Court/Tribunal below against whose order leave to appeal is sought for in this petition.

5. GROUNDS:

Leave to appeal is sought for on the following grounds:

- (i) Because both the Courts below did not appreciate the fact that the most essential part section 27 Evidence Act is that the statement must lead to recovery, in the present case there is no recovery made from the whereabouts of the Petitioner.
- (ii) Because both the Courts below did not appreciate the fact that the police could not produce any evidence to establish any corroboration between the two accused and the Petitioner.
- (iii) Because both the Courts below did not appreciate the fact that the police did not produce any thing like CDR, Bank Transaction etc to prove any connection of the Petitioner with the crime No 39/2022.

- (iv) Because both the Courts below did not appreciate the fact that it is very to implicate anyone in any crime by misusing section 27 of Evidence Act.
- (v) Because both the Courts below did not appreciate the fact that the Petitioner has no criminal history.
- (vi) Because both the Courts below did not appreciate the fact that the Petitioner is willing to co-operate with the authorities, all he is praying to be on the bail.
- (vii) Because the Hon'ble High Court did not appreciate the fact that both the main accused have already granted bail.
- (viii) Because both the Courts below did not appreciate the fact that prima facie there is nothing against the present Petitioner.
- (ix) Because both the Courts below did not appreciate the fact that the petitioner can no way hamper the trial or influence the witnesses as he is just doing some private job.

6. GROUNDS FOR INTERIM RELIEF:

Interim Relief is sought for on the following grounds

- 1) For that the petitioner has a good case on merit and he seeks liberty of this Hon'ble Court to refer to the grounds urged in the main petition while arguing for the interim relief.

- 2) For that the petitioner would suffer irreparable loss if no interim relief is granted to the petitioner as his arrest would not only make the present petition infructuous but would also adversely affect his career and his reputation and social life.
- 3) For that there is no criminal antecedent of the petitioner. He is a reputed person in the society and as he belongs to a respected family, there is no chance of his interfering with investigation or him absconding.
- 4) For that the petitioner has been falsely implicated in the present case and there is no need of any custodial interrogation in the matter.
- 5) For that the parents of the petitioner are old and he is the one who takes care of them, in a way the whole family is dependent on the petitioner.

7. MAIN PRAYER

In the facts and circumstances mentioned above, the petitioner respectfully prays that this Hon'ble Court may be pleased to:

- i) Grant special leave to appeal against the final order dated 22.08.2022 passed by the High Court of Madhya Pradesh, Bench at Indore, in M.CR.C. No. 36625 of 2022;
- ii) Pass such other and further orders as this Hon'ble Court may deem fit and proper.

8. INTERIM RELIEF:

It is therefore, prayed that this Hon'ble Court may be pleased to:-

- i) grant anticipatory bail to the petitioner in FIR No. 39 of 2022 dated 16/03/2022 registered at Police Station Berchha, District Shajapur (M.P), on such terms and conditions satisfactory of the Trial Court; And
- ii) Pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS
IN DUTY BOUND SHALL EVER PRAY.

NEW DELHI
DRAWN ON: 29.12.2022
FILED ON: 07.02.2022

DRAWN & FILED BY

ISHIT SAHARIA
COUNSEL FOR PETITIONER

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CRIMINAL) NO. OF
2022

IN THE MATTER OF:

UMESH UPADHYAY
.....PETITIONER

VERSUS

STATE OF M.P
.....RESPONDENT

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Court/Tribunal whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken or relied upon in the Special Leave Petition. It is further certified that the copy of the document/Annexure attached to the Special Leave Petition, is necessary to answer the question of law raised in the Special Leave Petition or to make out ground urged in the Special Leave Petition for consideration of this Hon'ble Court. This Certificate is given to the basis of the instructions given by the petitioner/person authorised by the petitioner whose Affidavit is filed in support of the Special Leave Petition.

NEW DELHI

DRAWN & FILED BY

FILED ON: 07.02.2023

ISHIT SAHARIA
COUNSEL FOR PETITIONER