

# Ramjan Khan vs The State Of Madhya Pradesh on 10 September, 2020

**Author: Sheel Nagu**

**Bench: Sheel Nagu**

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Mcrc.33195.2020

The High Court of Madhya Pradesh

M.Cr.C.33195.2020

(Ramjan Khan Vs. State of M.P.)

Gwalior dated 10.09.2020

Shri Vinod Pathak, learned counsel for the petitioner.

Shri Purushottam Tanwar, learned Panel Lawyer, for respondent/State.

Learned counsel for the rival parties are heard through video conferencing.

This is first application u/S.438 Cr.P.C. for grant of anticipatory bail by the petitioner.

Petitioner apprehends arrest in connection with offence punishable u/Ss.379 IPC registered as Crime No.235/2020 by Police Station Kotwali, District Shivpuri (M.P.).

Learned counsel for the State opposed the application and prayed for its rejection by contending that on the basis of the allegations and the material available on record, no case for grant of anticipatory bail is made out.

Petitioner apprehends arrest in respect of offence of theft of a motorcycle. Learned counsel for the petitioner submits that implication of the petitioner is based solely on the confessional statement of co-accused Ajay Aadiwasi recorded u/S.27 of Evidence Act.

Be that as it may. No case for grant of anticipatory bail is made out.

2 Mcrc.33195.2020 However, looking to the fact that since the offence in question attracts punishment upto 7 years and therefore, in view of the principles laid down by the Supreme Court in the case of Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273, It is directed that in offences involving punishment upto seven years imprisonment the police may resort to the extreme step of arrest only when the same is necessary and the petitioner does not cooperate in the investigation. The petitioner should first be summoned to cooperate in the investigation. If the petitioner cooperates in the investigation then the occasion of his arrest should not arise.

For ready reference and convenience the guidelines laid down by the Supreme Court in the case of Arnesh Kumar (Supra) are enumerated below:-

7.1 From a plain reading of the provision u/S.41 Cr.P.C., it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

3 Merc.33195.2020 7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.

7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required ? What purpose it will serve ? What object it will achieve ? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. Before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to

(e) of clause (1) of Section 41 Cr.P.C.

9. Another provision i.e. Section 41-A Cr.P.C. aimed to avoid unnecessary arrest or threat of arrest looming large on the accused requires to be vitalized. This provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) Cr.P.C., the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 Cr.P.C. has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

In view of above and considering the principles laid down by the Apex Court in the case of Arnesh Kumar (Supra), this Court is inclined to direct thus:

(i) That, the police may resort to the extreme step of arrest 4 Mcrc.33195.2020 only when the same is necessary and the petitioner fails to cooperate in the investigation.

(ii) That, the petitioner should first be summoned to cooperate in the investigation. If the petitioner cooperates in the investigation then the occasion of his arrest should not arise.

(iii) The petitioner has gracefully volunteered to donate Rs.5,000/- (Rs. Five Thousand Only) in the account of the High Court Bar Association, Gwalior for the purpose of assistance and rehabilitation of those members of the Bar, who are facing financial distress due to Lockdown and restrictive functioning of the courts owing to ongoing Covid-19 pandemic. This Court has no manner of doubt that the office bearers and the Senior members of the Bar shall ensure that the donation reaches the rightful and deserving claimants. Let the donation be deposited within seven (7) working days from the date of passing of this order.

With the aforesaid directions, the present anticipatory bail application stands disposed of.

Certified copy as per rules.

(Sheel Nagu) Judge pd PAWAN DHARK MADHYA PRADESH BENCH GWALIOR,  
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