

Smt. Ashna Agarwal vs State Of Madhya Pradesh on 12 October, 2020

Author: Rajeev Kumar Shrivastava

Bench: Rajeev Kumar Shrivastava

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THE HIGH COURT OF MADHYA PRADESH

M.Cr.C. No. 38034/2020

Smt. Ashna Agarwal & another Vs. State of M.P. & another

Gwalior, Dated:-12/10/2020

Shri Prashant Sharma, learned counsel for the applicants.

Shri Girraj Soni, learned Panel Lawyer for the respondent/State.

Shri S.K. Shrivastava, learned counsel for respondent No.2/complainant.

Matter is heard through video conferencing. The applicants have filed this first bail application under Section 438 of Cr.P.C. for grant of anticipatory bail.

The applicants apprehend their arrest in connection with Crime No.170/2020 registered at Police Station Kotwali, District Gwalior (M.P.) in relation to the offence punishable under Sections 498-A, 323, 294, 506 and 34 of IPC and Sections 3 & 4 of Dowry Prohibition Act.

It is submitted by learned counsel for the applicants - Ashna Agarwal & Shobit Agarwal that the applicants have not committed any offence. They have falsely been implicated in this case. Applicant No.1 is sister-in-law and applicant No.2 is brother-in-law of the prosecutrix. There is no evidence against the present applicants. Only omnibus allegations are against them. It is further submitted that applicants are reputed citizens of the locality and if they are sent to jail then their social reputation would get diminished. Applicants are ready to abide by any condition which may be imposed by this Court. Hence, prayed to grant benefit of anticipatory bail to the applicants or directions be issued in the THE HIGH COURT OF MADHYA PRADESH Smt. Ashna Agarwal & another Vs. State of M.P. & another light of the decision rendered by the Hon'ble Apex Court in the case of Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273.

Learned State counsel as well as learned counsel for the complainant have vehemently opposed the application and have submitted that offence is registered against the present applicants under Sections 498-A, 323, 294, 506 and 34 of IPC and Sections 3 & 4 of Dowry Prohibition Act. It is further submitted that at the time of marriage, belongings around Rs.65 Lacs including cash were given to the in-laws of the prosecutrix, despite there was demand of dowry. Hence, prayed to reject the present anticipatory bail application of the applicants.

Heard learned counsel for the parties at length through VC and considered the arguments advanced by them and perused the case diary.

The Hon'ble Supreme Court in the case of Arnesh Kumar (supra) has 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 THE HIGH COURT OF MADHYA PRADESH Smt. Ashna Agarwal & another Vs. State of M.P. & another 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. 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 vitalised. This provision makes it clear that in all cases where the arrest of a THE HIGH COURT OF MADHYA

PRADESH Smt. Ashna Agarwal & another Vs. State of M.P. & another 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."

The case is registered against the present applicants under Sections 498-A, 323, 294, 506 and 34 of IPC and Sections 3 & 4 of Dowry Prohibition Act. Considering the facts and circumstances of the case, present anticipatory bail application is disposed of in the light of law laid down by Hon'ble Apex Court in the case of Arnesh Kumar (Supra).

Prosecution is hereby directed to comply with the direction issued by Hon'ble Apex Court in Arnesh Kumar (supra) in it's letter & spirit.

E-copy of this order be sent to the trial Court concerned for information.

Certified copy/ e-copy as per rules/directions.

(Rajeev Kumar Shrivastava) Judge Shubhankar* SHUBHANKAR MISHRA 2020.10.13 10:29:58 +05'30'