

# Radhey Shyam Sharma vs The State Of Madhya Pradesh on 4 January, 2022

**Author: Deepak Kumar Agarwal**

**Bench: Deepak Kumar Agarwal**

01

THE HIGH COURT OF MADHYA PRADESH  
MCRC-60241-2021  
(Radhey Shyam Sharma Vs. State of M.P.)

Gwalior, Dated: 04.01.2022

Shri Sanjay Bahirani, learned counsel for applicant.

Shri B.P.S. Chauhan, learned Public Prosecutor for  
respondent/State.

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

Applicant is apprehending his arrest in connection with Crime No.758/2021 registered at Police Station-Joura, Distt. Morena, for the offence punishable under Sections 420, 272 and 273 of IPC.

The case of the prosecution in brief is that on 23.11.2021 at 1:00 pm, a team of Food Safety Officers searched one vehicle bearing No.UP 83 E 9834. In the said vehicle seven drums containing 700 litres of milk and two drums containing solution to be mixed in milk was stored. The person standing in the vehicle was trying to mix said solution in the milk. The team of Food Safety Officers by introducing themselves enquired from that person. He stated that he is Radheshyam Sharma S/o Shri Raghunath Prasad Sharma aged 60 years. Samples were taken as per Food Safety and Standards Act, 2006. Seized solution was destroyed with the consent of applicant/accused so that it cannot be used for adulteration. Samples were sent for State Food Laboratory, Bhopal for chemical analysis, report of which is still awaited. After completing formalities on the spot, Food Safety Officers filed FIR against present applicant at Police Station Joura District Morena. On the said FIR, offence punishable under Section 420, 272, 273 of IPC was registered against the present applicant.

Learned counsel for the applicant prays that applicant is innocent and falsely implicated in the case. Applicant is ready to cooperate in the investigation. It is further submitted that applicant is ready and willing to abide by any conditions which may be imposed by this Court. On such premises, learned counsel for the applicant prayed for bail.

Learned counsel for the State opposed the prayer and prayed for dismissal of the application.

Both the Advocates are heard. Case diary perused. Offence punishable under Sections 272 and 273 are bailable and offence punishable under Section 420 IPC attracts maximum punishment upto seven years.

However, in the case of Arnesh Kumar Vs. State of Bihar ((2014) 8 SCC 273), it has been directed by the Apex Court 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 applicant does not cooperate in the investigation. The applicant should first be summoned to cooperate in the investigation. If the applicant 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.

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 Arnes Kumar (Supra), this Court is inclined to direct thus:

- (i) That, the police may resort to the extreme step of arrest only when the same is necessary and the applicant fails to cooperate in the investigation.
- (ii) That, the applicant should first be summoned to cooperate in the investigation. If the applicant cooperates in the investigation, then the occasion of his arrest should not arise.
- (iii) The applicant shall also furnish a written undertaking that he will abide by the terms and conditions of various circulars, as well as, orders issued by the Central Government, State Government and local administration from time to time such as maintaining social distancing, physical distancing, hygiene etc. to avoid proliferation of Corona virus.

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

Certified copy as per rules.

(Deepak Kumar Agarwal) Judge ojha YOGENDR A OJHA 2022.01.05 10:24:23 +05'30'