

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE ATUL SREEDHARAN

ON THE 03rd OF JANUARY, 2023

MISC. CRIMINAL CASE NO. 58223 of 2022

BETWEEN:-

**BEERBAL DHAKAD S/O BHAGWANT
DHAKAD, AGED 45 YEARS, R/O RAMNAGAR
TEHSIL KAILARAS, DISTRICT MORENA
(MADHYA PRADESH)**

.....APPLICANT

(BY SHRI PURAN KULSHRESHTHA - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
THROUGH POLICE STATION JOURA
DISTRICT MORENA (MADHYA PRADESH)**

.....RESPONDENT

**(BY SHRI ANIL SHUKLA - PUBLIC
PROSECUTOR)**

*This application coming on for admission this day, the Court
passed the following:*

ORDER

This is **first** application filed under section 438 Cr.P.C. for grant of anticipatory bail to applicant Beerwal Dhakad, who is apprehending his arrest in connection with Crime No.632/2022 for the offences

punishable under Sections 420, 272, 273 of IPC, registered at Police Station Joura, District Morena (Madhya Pradesh).

The present application has been filed for the grant of anticipatory bail in the aforesaid case. In this case, the Food Inspector inspected the shop of the applicant and seized Paneer which was found to be unsafe for human consumption under Section 3 (1) (zz) of the Food Safety and Standards Act, 2006 (herein after referred to as the FSSA). The Food Inspector filed a complaint as required under the FSSA before the authority. In addition thereto, it filed the aforesaid mentioned F.I.R. for offences under Sections 420, 272 and 273 of IPC. Learned counsel for the applicant submits that the F.I.R. has been filed maliciously. The offence alleged to have been committed by the applicant is specific under this special Act being the FSSA Act where the applicant can be exposed the penalty under Section 57 (1) (ii) and pay the penalty not exceeding 10 lacs rupees.

Per contra, learned Public Prosecutor for respondent/State submits that the F.I.R. has been registered appropriately against the applicant for the aforementioned offences. He further says that an act of offence of cheating is made out in such a case where a person sells adulterated food.

For the offence of cheating under Section 420 IPC, ingredients of Section 415 of IPC have to be fulfilled. There must be a representation which is false which representation must lead a person to act in a manner which causes him loss or to act in a manner in which he would not have otherwise acted but for the false representation. *Prima facie* it does not appear to be a case where a customer has purchased the Paneer under the representation that the Paneer is pure and was later found to

be adulterated. The F.I.R. has been registered by the Food Inspector himself. The other sections being Sections 272 and 273 though prima facie applicable in this case are not cognizable and bailable offence. Learned counsel for the applicant submits that where there is a special law to deal with the specific situation the resort can not be taken into the general law as the same is violative of the maxim '*generalia specilibus non derogant*' or the general law shall not apply in derogation to the special law. *Prima facie*, it appears that the act of the applicant can only be proceeded under Section 57 (1) (ii) and Sections 272 and 273 of IPC. *Prima facie*, ingredients of Section 415 of IPC are not fulfilled in order to make the applicant liable for the offence under Section 420 of IPC.

Under the circumstances and in view of the above, the application is **allowed**. It is directed that if the applicant herein is arrested by the Arresting Officer, he shall be enlarged on bail upon his furnishing a personal bond in the sum of **Rs.50,000/- (Rupees Fifty Thousand Only)** with one solvent surety in the like amount to the satisfaction of the Arresting Officer.

Certified copy as per rules.

(ATUL SREEDHARAN)
JUDGE

AK/-