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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE VISHAL DHAGAT
ON THE 3rd OF SEPTEMBER, 2022

MISC. CRIMINAL CASE No. 42277 of 2022

Between:-
CHANDRABHAN KALOSIYA

.....APPLICANT

(SHRI SANKALP KOCHAR, ADVOCATE FOR APPLICANT)

AND

**STATE OF MADHYA PRADESH THROUGH
POLICE STATION SILWANI, DISTRICT RAISEN
(MADHYA PRADESH).**

.....RESPONDENT

*(SHRI ATMARAM BAIN, DEPUTY GOVERNMENT ADVOCATE FOR
STATE AND SHRI SANDEEP KUMAR SEN, ADVOCATE FOR
OBJECTOR)*

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

ORDER

This is first application under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail. Applicant is apprehending his arrest in connection with Crime No.247/2022, registered at Police Station-Silwani, District- Raisen, (M.P.) for offences punishable under Sections 294, 323, 354 and 506 of Indian Penal Code.

2. Learned counsel appearing for the applicant submitted that applicant was issued notice under Section 41-A Cr.P.C. by Police Station Silwani. He co-

operated in investigation of case and after completion of investigation, notices were issued to applicant to remain present before the Court for filing of charge-sheet. Counsel for applicant submitted that trial Courts are not considering application for bail under Section 439 of Code of Criminal Procedure on ground that applicants are not in police custody and in many cases, trial Courts are sending accused persons in jail. Learned counsel appearing for the applicant relied on Apex Court judgment reported in **(2022) 1 SCC 676, Siddharth vs State of Uttar Pradesh and another**. Para 5 of this judgment is quoted as under:-

"5. In High Court of Delhi vs CBI, the Delhi High Court dealt with an argument similar to the contention of the respondent that Section 170 Cr.P.C. prevents the trial court from taking a charge-sheet on record unless the accused is taken into custody. The relevant extracts are as under:

"15. Word "Accustody" appearing in this Section does not contemplate either police or judicial custody. It merely connotes the presentation of accused by the Investigating Officer before the Court at the time of filing of the charge-sheet whereafter the role of the Court starts. Had it not been so the Investigating Officer would not have been vested with powers to release a person on bail in a bailable offence after finding that there was sufficient evidence to put the accused on trial and it would have been obligatory upon him to produce such an accused in custody before the Magistrate for being released on bail by the Court.

16. In case the police/Investigating Officer thinks it unnecessary to present the accused in custody for the reason that the accused would neither abscond nor would disobey the summons as he has been co-operating in investigation and investigation can be completed without arresting him, the IO is not obliged to produce such an accused in custody.

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19. It appears that the learned Special Judge was labouring under a misconception that in every non-bailable and cognizable offence the police is required to invariably arrest a person, even if it is not essential for the purpose of investigation.

20. Rather the law is otherwise. In normal and ordinary course the police should always avoid arresting a person and sending him to jail, if it is possible for the police to complete the investigation without his arrest and if every kind of co-operation is provided by the accused to the Investigating Officer in completing the investigation. It is only in cases of utmost necessity, where the investigation cannot be completed without arresting the person, for instance, a person may be required for recovery of incriminating articles or weapon of offence or for eliciting some information or clue as to his accomplices or any circumstantial evidence, that his arrest may be necessary. Such an arrest may also be necessary if the Investigating Officer concerned or Officer-in-charge of the Police Station thinks that presence of the accused will be difficult to procure because of grave and serious nature of crime as the possibility of his absconding or disobeying the process or fleeing from justice cannot be ruled out."

3. It is submitted that applicant filed application for grant of anticipatory bail because applicant was under apprehension that as per prevalent practice, applicant's application under Section 439 Cr.P.C. may be rejected as he is not in custody and he may be sent to jail. In these circumstances, he filed application under Section 438 Cr.P.C.

4. Counsel for the applicant further submitted that trial Court has entered into merits of the case and has rejected the application under Section 438 Cr.P.C. Since his application for anticipatory bail has been dismissed by the trial Court, therefore, he has apprehension that he may be arrested in aforesaid crime No. In these circumstances, he has moved application for grant of

anticipatory bail before this Court.

5. Deputy Government Advocate appearing for the State as well as counsel appearing for the objector opposed the application for grant of anticipatory bail. It is submitted that earlier also similar offence has been registered against the applicant at Crime No. 212/2022 at Police Station Silwani. Considering aforesaid, applicant may not be released on anticipatory bail.

6. At this stage, counsel for the applicant submitted that complainant in Crime No. 212/2022 and Crime No. 247/2022 is common. Applicant has also filed FIR against the complainant. In this circumstances, it cannot be said that applicant is a habitual offender and he may not be given benefit of anticipatory bail.

7. Heard the counsel for the parties.

8. Applicant is under apprehension of his arrest, therefore, his application under Section 438 Cr.P.C. is maintainable.

9. Considering the nature of offences registered against the applicant and fact that applicant is government servant, application filed by applicant for grant of anticipatory bail is **allowed**.

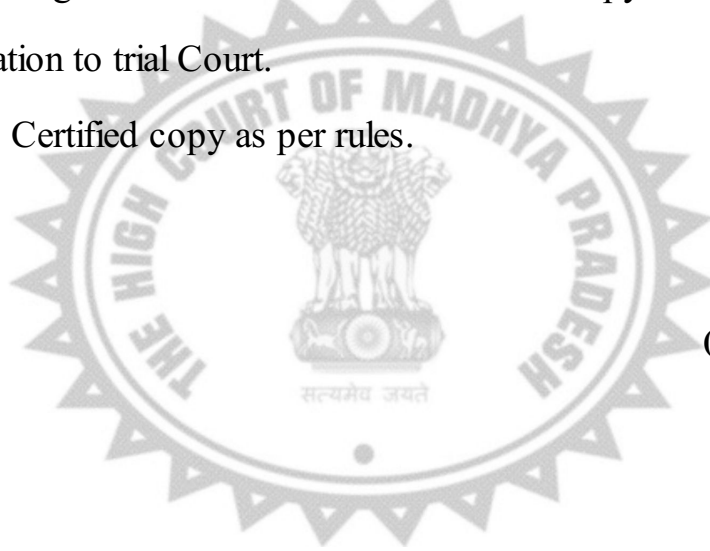
10. It is ordered that in the event of arrest of applicant in connection with aforesaid crime number and the offence, on his furnishing a personal bond in the sum of **Rs.50,000/- (Rs. Fifty Thousand Only)** with two solvent sureties in the like amount to the satisfaction of the Investigating Officer/Arresting Authority, applicant shall be released on anticipatory bail on condition that applicant will cooperate in investigation/trial of the case and will appear before Investigating Officer/trial Court, as and when required.

11. Applicant will further abide by the conditions enumerated in sub-section (2) of Section 438 of the Code of Criminal Procedure.

12. Trial Courts are directed that when an accused appear before the trial Court after receiving notice from police station for filing of charge-sheet, then on his appearance such accused person is deemed to be under custody of Court and his application under Section 439 Cr.P.C. is maintainable and he may not be sent to jail unnecessarily. Application filed under Section 439 Cr.P.C. shall be considered on merits in accordance with law and it may not be rejected on technical reason that he is not arrested therefore, not in custody. Appearance of accused before Court amounts to custody.

13. Registrar General is directed to send copy of order to District Judges for circulation to trial Court.

14. Certified copy as per rules.



(VISHAL DHAGAT)
JUDGE

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