THE HIGH COURT OF MADHYA PRADESH

PRINCIPAL SEAT AT JABALPUR

M.Cr.C. No.42914/2020

Smt. Anuradha Upadhyay

Versus

The State of Madhya Pradesh

Jabalpur, dated 23.11.2020

Mr. Manish Datt, Senior Advocate with Mr. Yogesh Soni, Advocate for the applicant.

Mr. A. Rajeshwar Rao, Deputy Advocate General for the respondent/State.

Case diary is available.

Heard.

This first bail application under Section 438 of the Code of Criminal Procedure has been filed by the applicant for grant of anticipatory bail apprehending her arrest in connection with Crime No.25/2019 registered at Police Station Economic Offences Wing (EOW) Unit Jabalpur of EOW Bhopal under Sections 13(1)(b) and 13(2) of the Prevention of Corruption Act, 1988 read with Sections 120-B and 109 of the Indian Penal Code.

2. Learned Senior Advocate submits that the charge-sheet has already been filed on 29.09.2020 and during the course of investigation, the respondent/Agency has never arrested the applicant as she had given full cooperation and assistance to the Investigating Agency and appeared before them as and when she was called for. He further submits that as per the case of the prosecution, the present applicant has been charged to earn disproportionate assets compare to her total income and expenses. Although, it is contended by learned Senior Advocate that the facts and figures presented by the

prosecution in the charge-sheet are erroneous and they acted over gross miscalculation on the income of the applicant. As per learned Senior Advocate, in the charge-sheet, the respondent/Agency has shown the total income of the applicant, however, it includes the income of the applicant, her husband and son as well. The allegation against the present applicant is that her husband namely Suresh Upadhyay was a Government employee and purchased the property in the applicant's name without intimating his department and the total income of the present applicant out of the said property is more than the expenses shown by her. He also submits that this is the incorrect calculation and the charges are based on a wrong premise because prior intimation in respect of purchasing the property has been given by the applicant's husband to his department. He submits that the investigation is over; charge-sheet has already been filed; no further interrogation is required and under the circumstance when during the course of investigation, the present applicant was never arrested by the respondent/Agency, therefore, at present, arrest of the present applicant that too at the age of 65 years and also during the period when there is an outbreak of COVID-19; in no manner is fruitful and cannot be considered to be justified.

3. Learned Senior Advocate further submits that the son of the present applicant appeared before the Court below and moved an application for grant of bail but the said application was rejected and he had been sent to jail. However, his bail application has been considered by this Court and has been enlarged on bail. He also submits that with such apprehension, the applicant moved an application for grant of anticipatory bail before the Court below but the same has been rejected. In support of his stand, learned Senior Advocate has

placed reliance upon the orders passed by this Court in various cases wherein considering the same circumstances, the Court has granted the benefit of anticipatory bail taking note of the fact that after completing the investigation and filing of the charge-sheet, there is no provision under which the accused should be sent to jail. He submits that the co-ordinate Bench of this Court in **M.Cr.C. No.17501/2016 [Rajendra Kori Vs. The State of Madhya Pradesh]** while considering the application filed under Section 438 of Cr.P.C. passed an order on 20.10.2016 discussing the facts and situation which is almost similar to the present case and finally arrived at a conclusion that when the accused has never been arrested during the course of investigation then there is no reason to keep him behind the bars and as such enlarged the applicant therein on anticipatory bail. Likewise, in **M.Cr.C. No.6644/2020 [Pushpendra Singh Vs. Union of India]**, this Court while considering the bail application filed under Section 438 of Cr.P.C. passed an order on 07.07.2020 reiterating the same analogy as has been considered by the co-ordinate Bench in **Rajendra Kori** (supra) and finally, granted the benefit of anticipatory bail to the applicant therein. He also submits that in **M.Cr.C. No.38107/2020 [Shri Sachin Upadhyay Vs. The State of Madhya Pradesh]**, this Court taking note of the facts situation available therein, though the said application has been filed by one of the co-accused namely Sachin Upadhyay under Section 439 of Cr.P.C. and accordingly granted the benefit of bail to the applicant for the reason that during the course of investigation, the applicant appeared before the Investigating Agency and provided full cooperation and was never being arrested by them. With the aforesaid submissions, learned Senior Advocate submits that the present applicant may also be enlarged on anticipatory bail.

4. On the other hand, learned Deputy Advocate General although has not controverted the factual position as has been narrated by learned Senior Advocate but has opposed the prayer for bail made by learned Senior Advocate and submits that the Court below has considered all relevant aspects and thereafter rejected the bail application filed under Section 438 of Cr.P.C. Therefore, considering the charges levelled against the present applicant, she is not entitled to be enlarged on anticipatory bail.

5. Considering the rival contentions urged by learned counsel for the parties and from perusal of record, I am of the opinion that in the present circumstance when the co-ordinate Bench of this Court while dealing with the similar situation, granted the benefit of bail to the applicant therein, therefore, the present applicant is also entitled to get the same benefit.

6. Thus, without commenting anything on the merits of the case, the present application of the applicant filed under Section 438 of Cr.P.C. is **allowed** and it is directed that in the event of surrendering before the concerned Court within 15 days from the date of this order in connection with the aforesaid crime, the applicant be released on bail upon her furnishing a personal bond in the sum of **Rs.1,00,000/- (Rupees One Lac)** coupled with the following conditions with one surety of the like amount to the satisfaction of the concerned Court.

7. This order will remain operative subject to compliance of the following conditions by the applicant:-

(i) The applicant will comply with all the terms and conditions of the bond executed by her;

(ii) The applicant will cooperate in the investigation/trial, as the case may be;

(iii) The applicant will not indulge herself in extending inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court;

(iv) The applicant shall not commit an offence similar to the offence of which she is accused;

(v) The applicant will not seek unnecessary adjournments during the trial; and

(vi) The applicant will not leave India without prior permission of the trial Court.

Certified copy as per rules.

(SANJAY DWIVEDI)
J U D G E

Devashish

Digitally signed by DEVASHISH MISHRA
Date: 2020.11.26 10:17:15 +05'30'