

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

**BEFORE
HON'BLE SMT. JUSTICE SUNITA YADAV
ON THE 29th OF JANUARY, 2024**

MISC. CRIMINAL CASE No. 1825 of 2024

BETWEEN:-

**SMT. RENU SHARMA W/O SHRI HEMNAT PACHAURI,
AGED ABOUT 35 YEARS, OCCUPATION: GOVT. SERVANT
(TEACHER), R/O D-1, T-8, OLD CHAMBAL COLONY PALI
ROAD SHEOPUR, DISTRICT SHEOPUR (MADHYA
PRADESH)**

.....APPLICANT

(BY SHRI AR SHIVHARE - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH THROUGH POLICE
STATION MORAR, DISTRICT GWALIOR (MADHYA
PRADESH)**

.....RESPONDENT

(BY SHRI ROHIT MISHRA - ADDITIONAL ADVOCATE GENERAL)

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

ORDER

This is **first** application filed by the applicants under Section 438 of the Cr.P.C. for grant of anticipatory bail relating to FIR No. 719 of 2023 registered at Police Station Morar, District Gwalior (M.P.) for the offence under Section 420, 419, 468, 471 of IPC.

Learned counsel for the applicant argued that applicant is innocent and has been falsely implicated. It is further submitted that the applicant is a lady having four months baby who may not be able to bear the rigours of incarceration. Further submission is that applicant is working as teacher since

the year, 2021. As per her appointment letter dated, 08.10.2021, she has been appointed in the category of EWS (Economically Weaker Section) not in the category of Physically Handicapped. Under these circumstances, so also, in the light of the fact that all the documents are in possession of the department, her custodial interrogation is no more required. Further submission is that maximum punishment prescribed for the alleged offence is up to seven years and, therefore, in the light of case of **Arnesh Kumar Vs. State of Bihar reported in (2014) 8 SCR 128** the applicant is ready to co-operate in the investigation. The applicant is the permanent resident of District Sheopur (M.P.) and there is no likelihood of her absconsion or tampering with the prosecution evidence, therefore, he prays for grant of anticipatory bail to the applicant.

On the other hand, learned State counsel vehemently opposed the bail application and prayed for its rejection.

Heard learned counsel for the rival parties and perused the case diary available on record.

Considering the facts and circumstances of the case, without commenting upon the merits of the case, this Court finds it appropriate to grant anticipatory bail to the applicant in the light of the case of **Arnesh Kumar (supra)** looking to the fact that since the offence in question attracts punishment up to 7 years and, therefore, in view of the principles laid down by the Supreme Court in the case of **Arnesh Kumar (supra)**, it is directed that in offences involving punishment up to seven years imprisonment the court 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 Vs. State of Bihar [(2014) 8 SCC 273]** 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 subclauses (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."

Considering the overall facts and circumstances of the case, but without expressing any opinion on the merits of the case and in the light of the judgment passed by the Supreme Court in the case of **Arnesh Kumar (supra)**, this Court deems it appropriate to allow this application for grant of anticipatory bail. In the event of arrest, the applicant is directed to be released on bail on furnishing a surety bond by him in the sum of **Rs.50,000/- (Rs. Fifty Thousand Only)** with one solvent surety in the like amount to the satisfaction of the trial court.

The applicant shall further abide by other conditions enumerated under Section 438 (2) of the Code of Criminal Procedure and shall cooperate in the investigation, otherwise this bail order shall automatically stand cancelled.

Application stands allowed and **disposed of**.

Certified copy as per rules.

(SUNITA YADAV)
JUDGE

vpn