

SukhdIn Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : May-02-2003

Reported in : 2003(2)MPHT495; 2003(3)MPLJ412

Judge : Subhash Samvatsar, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 439; [Indian Penal Code \(IPC\), 1860](#) - Sections 212 and 216; Madhya Pradesh Dakaiti Aur Vyapaharan Prabhavit Kshetra Adhiniyam, 1981 - Sections 2B, 11 and 13

Appeal No. : Misc. Criminal Case No. 1707/2003

Appellant : Sukhdin

Respondent : State of M.P.

Advocate for Def. : S.M.A. Naqvi, Addl. Govt. Adv.

Advocate for Pet/Ap. : V.K. Saxena, Adv.

Disposition : Misc. Cr. C. allowed

Judgement :

ORDER

Subhash Samvatsar, J.

1. Heard the Counsel for parties and perused the case diary.

2. This is first bail application under Section 439, Cr.PC. Crime No. 27/2003 is registered against the applicant for committing offences under Sections 212, 216, IPC and Sections 11 and 13 of M.P.D.A.V.P.K. Act.

3. It is alleged that on 14-2-2003 the present applicant has supplied belt of cartridges, food and other domestic articles to the gang of dacoits. Hence, the present criminal case is registered against him. Lower Court rejected the bail application under Section 439, Cr.PC on the ground that since offence under Sections 11 and 13 of M.P.D.A. V.P.K. Act are levied against the applicant, the applicant is not entitled to bail in view of Section 5 (2) of the M.P.D.A.V.P.K. Act.

4. This bail application is opposed by Counsel for State. It is submitted by learned Govt. Advocate that Section 5 (2) of the M.P.D.A.V.P.K. Act provides that when a Govt. Advocate opposes an application for bail on the ground that case under the provisions of M.P.D. A. V.P.K. Act is registered against the applicant then the Court has no power to grant the bail.

5. Counsel for the applicant submitted that if a prima facie offence is not made out against the applicant, then in that case bail can be granted to the applicant, For this purpose he relied on a Full Bench decision of this Court in the case of Gulabchand v. State of M.P., 1982 J.L.J 170.

6. In the present case applicant is arrested for an offence under Sections 212 and 216, IPC and offences under Sections 11 and 13 of M.P.D.A.V.P.K. Act. Counsel for applicant urged that no offence under the said Act is made out against the applicant from the allegations in the case dairy. For this purpose he invited attention to Sections 212 and 216, IPC. Section 212 is an offence for harbouring offender while Section 216 applies where harbouring offender has escaped from the custody or whose apprehension has been ordered by the Court. From the allegations in the case dairy offence under Section 216 is prima facie not made out against the applicant in the present case as there are no allegations that the person to whom materials was supplied has escaped from the custody or he has been convicted or charged with any offence. As regards Section 212 is concerned, it provides that:--

'whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with an intention of screening him from legal punishment shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to 5 years and shall also be liable to fine.'

7. In the present case there are no allegations of harbouring or concealing a person with an intention of screening him from legal punishment. The word 'harbour' is defined under Section 52A, IPC. The said section reads as under:--

'Harbour.--Except in Section 157, and in Section 130 in the case in which the harbour is given by the wife or husband of the person harboured, the word 'harbour' includes the supplying of a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting of a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension.'

8. From the plain reading of the aforesaid section it is clear that the word harbour includes supplying a person with shelter, food, drink, money, clothes, arms, ammunitions or means of conveyance or assisting a person by any means whether of the same kind as those enumerated in this section or not, to evade apprehension. Section 212 implies that the accused person harbour a person with an intention of screening him of legal punishment. Thus, prima facie from the allegations in the case dairy offence under Section 216, IPC is also not made out. As regards the provisions of M.P.D.A.V.P.K. Act is concerned, Section 2-B defines the word 'Dacoit'. Entry 5 of the Schedule of the Act provides that supplying material, clothes, means of communication, transport or other articles to a person assembled before or after the commission of dacoity or preparing to commit the dacoity. In the present case there are allegations of supplying material but there are no allegations that the said material was supplied before or after commission of dacoity or for preparing to commit a dacoity. In absence of these allegations, provisions of Adhinyam are not prima facie attracted. And when the provisions of the Act are not specifically attracted in the present case this Court has a power to grant bail to the accused persons. Merely mentioning of the provisions are not

sufficient. There should be sufficient material on record to demonstrate that the provisions of the Act are attracted and unless and until ingredients of Sections 212 and 216 are not made out. From the case dairy the provisions of the Act cannot be made applicable in the present case.

9. Considering all these facts, I allow this application and directs that the applicant be released on bail on his furnishing a personal bond in the sum of Rs. 30,000/- with two solvent sureties of like amount to the satisfaction of Trial Court.

M.Cr.C. stands disposed of.

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