



1

MCRC-30127-2026

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE RAJESH KUMAR GUPTA

ON THE 16th OF JULY, 2026

MISC. CRIMINAL CASE No. 30732 of 2026

DR REKHA JIAN

Versus

THE STATE OF MADHYA PRADESH

.....
Appearance:

*Shri Sankalp Kochar with Shri Sankalp Sharma and Shri Greeshm Jain -
Advocates for the applicant.*

*Shri M.P.S. Raghuvanshi, learned Senior Advocate with Shri Sameer Kumar
Shrivastava and Shri Vibhor Kumar Sahu- Advocates for the complainant.*

Shri Atul Kumar Sharma - Public Prosecutor.
.....

WITH

MISC. CRIMINAL CASE No. 29281 of 2026

SAMEER JAIN

Versus

THE STATE OF MADHYA PRADESH
.....

Appearance:

*Shri Sankalp Kochar with Shri Sankalp Sharma, Shri Greeshm Jain and Shri
Sanjay Gupta - Advocates for the applicant.*

*Shri M.P.S. Raghuvanshi, learned Senior Advocate with Shri Sameer Kumar
Shrivastava and Shri Vibhor Kumar Sahu- Advocates for the complainant.*

Shri Atul Kumar Sharma- PP for the State.
.....

MISC. CRIMINAL CASE No. 30127 of 2026

RAHUL JAIN

Versus

THE STATE OF MADHYA PRADESH
.....

Appearance:

Shri Sankalp Kochar with Shri Sankalp Sharma, Shri Greeshm Jain and Shri



Sanjay Gupta- Advocates for the applicant.

*Shri M.P. S. Raghuvanshi, learned Senior Advocate with Shri Sameer Kumar Shrivastava
Vijay Kumar Jha - Advocate for the complainant.*

Shri Atul Kumar Sharma- PP for the State.

.....
HEARD ON: 07.07.2026

DELIVERED ON : 16.07.2026
.....

ORDER

Since all the above-mentioned applications under Section 482 of the BNSS arise out of the same Crime No.346/2026 registered at Police Station Kotwali, District Ashoknagar (M.P.), involve identical questions of fact and law, and are founded upon the same prosecution case, they are being heard analogously and are being decided by this common order.

2. The applicants apprehend their arrest in connection with Crime No.346/2026 registered for offences punishable under Sections 299, 352, 353(2), 61 and 302 of the BNS and Sections 66B and 66C of the Information Technology Act, 2000.

3. According to the prosecution, on 02.06.2026 one objectionable message allegedly relating to Jain saint Muni Shri Sudhasagar Ji Maharaj was posted in a WhatsApp group known as

through mobile number The contents of the message were derogatory and had the tendency to outrage the religious feelings of followers of the said Jain saint and thereby disturb communal harmony and public peace. On the complaint of one Rakesh Kansal, Crime No.346/2026 came to be registered at Police Station Kotwali, District Ashoknagar.

4. Initially, the FIR was registered against an unknown person.



Subsequently, during investigation, the names of the present applicants came to be reflected on the basis of technical investigation and other material allegedly collected by the investigating agency. The prosecution alleges that cyber analysis coupled with statements of witnesses and other electronic material disclose the involvement of the applicants in publication and circulation of the alleged message. Accordingly, offence was registered against the present applicants.

5. Learned counsel for the the applicant- Dr. Rekha Jain submits that the applicant is innocent and has been falsely implicated in this case. The entire prosecution case, even if accepted at its face value, fails to disclose any prima facie material warranting custodial interrogation of the applicant. It is submitted that the applicant is a former Deputy Superintendent of Police who voluntarily retired from service in the year 2014 after rendering long years of distinguished service. After retirement, she has devoted herself to religious and charitable activities as a Brahmacharini and disciple of revered Jain Acharya Shri Vidyasagar Ji Maharaj. It is contended that throughout her career she has maintained an unblemished record and has never been implicated in any criminal case. Learned counsel submits that the present FIR cannot be appreciated in isolation as according to him, the impugned prosecution is merely one episode in a prolonged series of disputes commencing from the year 2022 involving anonymous defamatory letters circulated against Jain saints and subsequent litigation between different groups within the Jain community. It is argued that the applicant herself actively assisted the police authorities during investigation of Crime



No.394/2022 by facilitating installation of CCTV cameras near Katra Post Office, Sagar. The CCTV footage allegedly led to identification of certain persons who were subsequently prosecuted. According to the counsel for the applicant, her participation in that investigation invited hostility from certain persons who thereafter began targeting her through complaints, defamatory campaigns and criminal proceedings. Learned counsel further submits that thereafter several incidents occurred including alleged defamatory speeches, circulation of objectionable social media content and institution of various proceedings by and against different members of the community. Reference has been made to proceedings before the National Commission for Women, Writ Petition No.24749/2024, Crime No.1151/2024 and various representations submitted before police authorities. It is submitted that the present prosecution is only a continuation of the previous hostility and has been initiated with an oblique motive to falsely implicate the applicant. Learned counsel further submits that the applicant was not named in the FIR. No overt act has been attributed to her in the FIR. It is contended that the FIR nowhere alleges that the applicant authored the message, posted the message, forwarded the message, administered the WhatsApp group or transmitted the impugned communication. The entire prosecution, according to learned counsel, rests solely upon the alleged connection of one mobile number with the applicant. It is further argued by, learned counsel that the disputed mobile number admittedly remained with the applicant only temporarily during the period when her own mobile handset had allegedly become defective. The handset and SIM, according to the defence, belonged



to co-applicant Sameer Jain, who runs a mobile repair establishment. It is argued that the said handset was returned to Sameer Jain in February 2026, whereas the alleged WhatsApp message was posted only on 02.06.2026. Thus, according to the applicant, even assuming the prosecution story to be correct, the electronic device was no longer in her possession or control on the date of occurrence. Learned counsel has invited attention to the anticipatory bail application as well as representations allegedly submitted by Sameer Jain before various authorities wherein he is stated to have consistently asserted that the mobile handset and SIM card remained with him at the relevant point of time and that he was prepared to produce the handset for forensic examination. It is further submitted that despite such material, the investigating agency proceeded on a predetermined assumption to implicate the present applicant. It is argued that contemporaneous complaints submitted by Rajesh Jain and Dr. Sanjeev Kumar Jain indicate that pressure was allegedly exerted upon witnesses during investigation to make statements against the applicant. The learned counsel has also referred to the representation addressed by the applicant to the Principal Secretary, Home Department, immediately after registration of the FIR alleging bias in investigation and requesting an independent enquiry. According to learned counsel, these circumstances lend support to the applicant's apprehension that the investigation has not proceeded in an objective manner. It is further contended that the case rests substantially upon electronic evidence. No forensic report, hash-value analysis, device extraction report, call-detail correlation or any expert opinion has yet been produced connecting the



applicant with the alleged publication. It is argued that in absence of such scientific material, mere assumptions regarding prior use of a mobile number cannot constitute sufficient ground for custodial interrogation. It is also submitted that the offences alleged in the present case are punishable with imprisonment extending to a maximum term of three years and are founded predominantly upon documentary and electronic evidence. Therefore, custodial interrogation, is not required.

6. Reliance has been placed upon the judgments of the Supreme Court in **Gurbaksh Singh Sibbia v. State of Punjab (1980) 2 SCC 565**, **Siddharam Satlingappa Mhetre v. State of Maharashtra (2011) 1 SCC 694**, **Arnesh Kumar v. State of Bihar (2014) 8 SCC 273**, **Satender Kumar Antil v. Central Bureau of Investigation (2022) 10 SCC 51**, **Md. Asfak Alam v. State of Jharkhand 2023 INSC 660**, **Sushila Aggarwal v. State (NCT of Delhi) (2020) 5 SCC 1** and the decisions of this Court in **Zarina Begum v. State of Madhya Pradesh 2021 SCC Online MP 961** and **Deepankar Vishwas v. State of Madhya Pradesh, M.Cr.C.25252/2022**, to contend that arrest should not be resorted to merely because it is lawful to do so and that custodial interrogation must be justified on objective grounds.

7. It is also submitted that the applicant is a permanent resident of District Sagar, has deep roots in society, possesses no criminal antecedents, undertakes to cooperate with the investigation in every manner and is willing to abide by any condition that may be imposed by this Court.

8. Learned counsel appearing for applicant **Sameer Jain** submits that the applicant has been falsely implicated and that the entire prosecution case,



even if accepted at its face value, does not disclose any circumstance necessitating his custodial interrogation. It is submitted that the FIR itself was initially registered against an unknown person and the name of the present applicant surfaced only during investigation. According to the learned counsel, the mere fact that the disputed mobile number is alleged to have been used by the applicant cannot, by itself, constitute sufficient material for denying the anticipatory bail to the applicant. Learned counsel submits that the applicant belongs to the Jain community and has deep respect for Jain saints, religious institutions and traditions. It is argued that the alleged WhatsApp post, if read in its entirety, neither discloses any deliberate or malicious intention to outrage the religious feelings of any class of persons nor does it reveal any intention to promote hatred or disharmony between different religious communities. It is further argued by learned counsel that the alleged message was posted in the backdrop of certain disputes which had earlier arisen within sections of the Jain community itself regarding religious affairs at Sagar. According to the applicant, whatever was expressed was an emotional reaction to those events and not a calculated attempt to insult any religion or to disturb public tranquillity. It is submitted that the essential ingredient of deliberate and malicious intention, which forms the foundation of the alleged offence under Section 299 of the BNS, is conspicuously absent from the prosecution material presently collected. Learned counsel further submits that immediately after registration of the FIR, the applicant never attempted to evade the process of law. Rather, he submitted detailed representations before various senior police authorities



expressing his willingness to cooperate with the investigation. Attention has been invited to the representations dated 08.06.2026, wherein the applicant is stated to have categorically expressed his readiness to appear before the Investigating Officer and to hand over his mobile handset bearing IMEI for forensic examination. According to learned counsel, the conduct of voluntarily offering the mobile handset itself demolishes the allegation that the applicant intended either to destroy electronic evidence or to obstruct investigation. It is further argued that the applicant has consistently maintained before different authorities that he should not be compelled to falsely implicate any innocent person during investigation. Learned counsel submits that similar grievances regarding the manner in which investigation was being conducted were independently raised by Rajesh Jain and Dr. Sanjeev Kumar Jain before higher authorities, thereby lending support to the applicant's apprehension that the investigation was not proceeding in a wholly impartial manner.

9. It is also contended that the applicant had also invoked the jurisdiction of the competent Court by filing an application under Section 175(3) of the BNSS seeking a fair and impartial investigation. According to the applicant, this conduct clearly indicates that he was not attempting to avoid investigation but was, on the contrary, requesting that the investigation proceed strictly in accordance with law. Learned counsel further submits that the prosecution case rests substantially upon electronic evidence, all of which remains available for scientific examination. The mobile handset, SIM card, WhatsApp records, server logs, metadata, call detail records and



forensic examination can all be carried out without taking the applicant into custody. It is argued that no recovery is required from the applicant and no purpose would be served by his custodial arrest.

10. Reliance has been placed upon the decisions of the Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar (Supra)**, **Satender Kumar Antil v. CBI(Supra)**, **Md. Asfak Alam v. State of Jharkhand (Supra)**, **Sushila Aggarwal v. State (NCT of Delhi)(Supra)** and **Siddharam Satlingappa Mhetre v. State of Maharashtra (Supra)** to contend that arrest should not be resorted to merely because the investigating agency possesses the power to arrest and that the Court is required to examine whether custodial interrogation is genuinely necessary. The applicant is a permanent resident of District Sagar, has no criminal antecedents, has roots in society and undertakes to cooperate with the investigation in every respect.

11. Learned counsel appearing for applicant **Rahul Jain** that the applicant is innocent and has been falsely implicated in this case He further submits that the prosecution has failed to assign any specific role whatsoever to the present applicant. It is submitted that the FIR was admittedly registered against an unknown person and that the present applicant was not named therein. No allegation has been made in the FIR that the applicant authored the impugned message, uploaded the same, forwarded it, administered the WhatsApp group or otherwise participated in its publication. According to the learned counsel, the applicant has been implicated during investigation merely on the basis of a vague assertion that his involvement surfaced during cyber investigation, without disclosing the



precise nature of such involvement. Learned counsel submits that even the order of the trial court records that the actual posting of the disputed WhatsApp message is attributed to co-applicant Sameer Jain. Therefore, according to him, there is no independent allegation against the present applicant except a generalized reference to his alleged involvement. It is argued that such omnibus allegations, unsupported by any overt act, are insufficient to justify custodial interrogation. It is further submitted that the prosecution has not produced any material indicating that the disputed mobile number was ever registered in the name of the present applicant or remained under his control at the relevant point of time. Attention has also been invited to the contemporaneous representations submitted by Sameer Jain and the complaints submitted by Rajesh Jain and Dr. Sanjeev Kumar Jain alleging pressure during investigation. Learned counsel submits that these documents constitute relevant circumstances while considering whether arrest is genuinely required. Learned counsel submits that the entire prosecution is founded upon electronic records and cyber analysis. Such evidence is already capable of preservation through scientific means and therefore the applicant's custodial interrogation would serve no useful purpose. It is argued that the alleged offences are punishable with imprisonment extending to less than seven years and, therefore, the principles laid down by the Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar (Supra)** squarely govern the present case.

12. It is also submitted that the applicant is a permanent resident of District Sagar, has no criminal antecedents, is ready to cooperate with



investigation and undertakes to abide by every condition which may be imposed by this Court.

13. Per contra, learned PP opposed the applications and submitted that the allegations relate to circulation of objectionable content concerning a revered Jain saint, resulting in serious resentment amongst members of the Jain community. It is submitted that the investigation conducted so far reveals prima facie involvement of the applicants through electronic evidence and technical analysis. According to the learned Government Advocate, investigation is still at a nascent stage and custodial interrogation may be necessary to ascertain the complete chain of events, identify the source of the electronic communication, recover digital evidence, determine the role of each participant and identify other persons, if any, involved in the commission of the alleged offence. It is submitted that electronic offences frequently involve deletion of data, multiple devices, cloud storage and encrypted communication and therefore the investigating agency should not be deprived of its statutory power to conduct an effective investigation. Learned Government Advocate further submits that the allegations involve publication of material allegedly capable of disturbing public order and hurting religious sentiments. Such offences, according to the prosecution, have wider societal ramifications and therefore require thorough investigation. It is argued that grant of anticipatory bail at this stage may adversely affect collection of evidence and may embolden the applicants to influence witnesses acquainted with the facts of the case. It is therefore prayed that all the applications deserve dismissal.



14. Learned Senior Advocate Shri Raghuvanshi, Shri Sharma and Shri Sahu appearing for the complainant adopted the submissions advanced on behalf of the State. It is further contended that the material collected during investigation prima facie indicates active involvement of the applicants in the events leading to publication and circulation of the disputed WhatsApp message. According to the complainant, the electronic evidence collected by the investigating agency cannot be minutely scrutinized at the stage of anticipatory bail and the Court should refrain from entering into disputed questions of fact. It is submitted that offences affecting religious harmony occupy a distinct position and the Court should exercise caution before granting the extraordinary relief of anticipatory bail. The complainant accordingly prayed that the applications be rejected.

15. Heard counsel for the rival parties and perused the case diary and the entire material available on record with due care.

16. After hearing all the rival submissions, before this Court, the following questions arise for consideration:

- (i) Whether the applicants have succeeded in making out a case for grant of anticipatory bail under Section 482 of the BNSS?*
- (ii) Whether custodial interrogation of the applicants appears necessary for a fair and effective investigation?*
- (iii) Whether the nature of allegations, the material collected during investigation and the statutory framework governing offences punishable with imprisonment extending up to three years justify denial of the discretionary relief sought?*
- (iv) To what extent do the principles laid down by the Hon'ble Supreme Court in Gurbaksh Singh Sibbia(Supra), Siddharam Satlingappa Mhetre(Supra), Arnesh Kumar(Supra), Sushila Aggarwal, Satender Kumar Antil (Supra) and Md. Asfak Alam (Supra) govern the present controversy?*

17. At the outset, it deserves to be noticed that the Court, while



considering an application seeking anticipatory bail, is not expected to undertake a meticulous appreciation of evidence or to record findings on disputed questions of fact which are required to be adjudicated during trial. The Court is required to examine whether, on the basis of the material presently available, custodial interrogation appears necessary, whether the accusations disclose a prima facie case warranting arrest and whether the discretionary relief of anticipatory bail deserves to be exercised having regard to the settled principles governing personal liberty under Article 21 of the Constitution.

18. The extraordinary remedy of anticipatory bail is intended to protect an individual against unnecessary arrest while simultaneously ensuring that a fair investigation is not impeded. The power is discretionary and is to be exercised on the facts of each case after balancing the competing interests of individual liberty and the societal interest in a fair criminal investigation.

19. The Constitution Bench of the Hon'ble Supreme Court in **Gurbaksh Singh Sibbia v. State of Punjab**, (1980) 2 SCC 565, while interpreting the scope of anticipatory bail, authoritatively held that the provision confers a valuable discretionary power intended to protect personal liberty and that no inflexible formula can be laid down for its exercise. The Court observed that the discretion must be exercised judiciously having regard to the facts of each case and that the power cannot be restricted by judicially engrafted limitations not found in the statute.

20. The Constitution Bench further emphasized that anticipatory bail is an important facet of the constitutional guarantee of personal liberty and that



arrest should not be employed as a punitive measure merely because the investigating agency possesses the legal authority to arrest.

21. The aforesaid principles were subsequently elaborated in **Siddharam Satlingappa Mhetre v. State of Maharashtra**, (2011) 1 SCC 694, wherein the Hon'ble Supreme Court reiterated that personal liberty occupies a pre-eminent position in the constitutional framework and that arrest should ordinarily be the last option available to the investigating agency.

22. The Supreme Court held that while considering an application for anticipatory bail, the Court should, inter alia, consider:

- (i) the nature and gravity of accusation;*
- (ii) the role attributed to the accused;*
- (iii) the necessity of custodial interrogation;*
- (iv) the possibility of the applicant fleeing from justice;*
- (v) the likelihood of influencing witnesses or tampering with evidence; and*
- (vi) whether arrest is genuinely required for effective investigation.*

23. The Constitution Bench in **Sushila Aggarwal v. State (NCT of Delhi)**, (2020) 5 SCC 1, reaffirmed that anticipatory bail is a device to secure individual liberty and observed that the Courts should strike a balance between the right to personal freedom and the legitimate interests of investigation. The Court further held that anticipatory bail should not ordinarily be circumscribed by arbitrary restrictions and that the conditions imposed must bear a rational nexus with the purpose sought to be achieved.

24. In **Joginder Kumar v. State of U.P.**, (1994) 4 SCC 260, the Hon'ble Supreme Court emphasized that the existence of power to arrest is one thing and the justification for its exercise is another. The Court observed that no arrest can be made merely because it is lawful for the police officer to do so.



The investigating officer must be able to justify the necessity of arrest.

25. The aforesaid principle assumes considerable significance in the present case, where the prosecution principally relies upon electronic records and documentary material. The Court is therefore required to examine whether the material presently available discloses any compelling necessity for custodial interrogation of the applicants.

26. The constitutional safeguards against arbitrary arrest were further emphasized in **D.K. Basu v. State of West Bengal**, (1997) 1 SCC 416, wherein the Supreme Court reiterated that personal liberty under Article 21 cannot be curtailed except in accordance with a fair, just and reasonable procedure established by law.

27. The law relating to arrest in offences punishable up to seven years now stands authoritatively settled by the Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar**, (2014) 8 SCC 273.

28. The Supreme Court held that arrest is not automatic merely because an offence is cognizable. Before effecting arrest, the investigating officer must satisfy himself that such arrest is necessary having regard to the parameters specified by

29. The Supreme Court further directed that where arrest is not necessary, notice requiring appearance should ordinarily be issued and unnecessary arrests should be avoided. The rationale underlying the decision is that arrest should never become a routine investigative tool and that deprivation of liberty must satisfy the constitutional requirement of necessity. Although the judgement laid down in the case of **Arnesh Kumar (supra)**



arose under Section 498-A IPC, the principles laid down therein have repeatedly been held to be of general application in offences punishable with imprisonment extending up to seven years.

30. The principles laid down in **Arnesh Kumar (supra)** were further explained and expanded by the Hon'ble Supreme Court in **Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51**.

31. The Supreme Court observed that the criminal justice system cannot function on the assumption that arrest is the normal rule. Personal liberty is the constitutional norm, whereas arrest and detention constitute exceptions which must be justified by necessity. The Supreme Court emphasized that where investigation can effectively proceed without custodial interrogation, arrest should ordinarily be avoided and the accused should be permitted to cooperate with the investigating agency. The Court also reiterated that the object of arrest is to secure effective investigation and not to inflict punishment before conviction.

32. It is now well settled that arrest is not an end in itself. The power to arrest is conferred to facilitate a fair and effective investigation and not to inflict punishment prior to conviction. Therefore, while considering an application for anticipatory bail, one of the principal considerations is whether the object sought to be achieved by arrest cannot otherwise be accomplished through cooperation of the accused with the investigating agency.

33. In **Md. Asfak Alam v. State of Jharkhand & Another , (2023) 8 SCC 632**, the Hon'ble Supreme Court reiterated that arrest is not intended to



be a punitive measure and that the Courts must carefully examine whether custodial interrogation is genuinely necessary. The Court observed that deprivation of liberty has serious constitutional consequences and, therefore, the investigating agency must justify the necessity of arrest on objective considerations.

34. Similarly, in **Aman Preet Singh v. CBI, (2022) 13 SCC 764**, the Supreme Court held that where the accused has cooperated with the investigation and custodial interrogation is not shown to be indispensable, denial of liberty would not ordinarily be justified merely because the investigating agency possesses the power to arrest.

35. In **Sanjay Chandra v. CBI, (2012) 1 SCC 40**, while dealing with economic offences, the Hon'ble Supreme Court emphasized that the object of bail is to secure the presence of the accused during investigation and trial and not to impose pre-trial punishment. The Court observed that detention before conviction should not become a substitute for punishment.

36. The aforesaid principles acquire greater significance where the prosecution case is founded substantially upon documentary or electronic evidence. In such cases, the material evidence ordinarily remains capable of scientific preservation and examination, and therefore the necessity of custodial interrogation requires closer scrutiny.

37. The allegations in the present case arise out of an electronic communication allegedly circulated through a WhatsApp group. The prosecution itself asserts that the investigation is based upon cyber analysis, mobile phone records, technical investigation, electronic devices and digital



material. Thus, *prima facie*, the case is predominantly founded upon electronic evidence. It is a matter of common knowledge that electronic evidence such as mobile phones, SIM cards, call detail records, Internet Protocol logs, server information, metadata, forensic extraction reports and other digital records are ordinarily capable of scientific examination independent of custodial detention of the accused. Where such electronic devices have already been identified or can be secured in accordance with law, the investigating agency must demonstrate, by reference to specific facts, why custodial interrogation is indispensable. Mere assertion that investigation is continuing cannot by itself constitute sufficient justification for depriving a citizen of personal liberty. The Court is conscious that each criminal case must necessarily depend upon its own facts and that no straight-jacket formula can be evolved. Nevertheless, the constitutional mandate flowing from Article 21 requires that arrest must bear a rational nexus with the legitimate requirements of investigation.

38. The offences alleged against the applicants arise under Sections 299, 352, 353(2), 61 and 302 of the BNS together with Sections 66B and 66C of the Information Technology Act.

39. At the present stage, this Court is not expected to render any conclusive finding regarding the applicability or otherwise of the said provisions. However, for the limited purpose of deciding whether anticipatory bail deserves to be granted, it becomes necessary to ascertain whether the accusations, if accepted at their face value, *prima facie* disclose circumstances requiring custodial arrest. The learned counsel for the



applicants has repeatedly emphasized that the maximum punishment prescribed for the principal offences invoked by the prosecution does not exceed three years' imprisonment. Without expressing any final opinion upon the exact sentence that may ultimately become applicable depending upon the proved facts and the precise statutory provisions attracted, it is evident that the alleged offences do not fall within the category of offences punishable with death or imprisonment for life. This aspect assumes significance while considering the necessity of arrest in the light of the principles laid down in **Arnesh Kumar(supra)** and **Satender Kumar Antil (supra)**.

40. The Hon'ble Supreme Court has consistently held that arrest cannot be treated as the normal consequence of registration of a cognizable offence. Rather, the investigating officer must satisfy himself that arrest is necessary for one or more legally recognized purposes, namely- (i) to prevent commission of further offence; (ii) to ensure proper investigation; (iii) to prevent disappearance of evidence; (iv) to prevent inducement or intimidation of witnesses; (v) to secure the presence of the accused during investigation. Unless one or more of the aforesaid conditions are shown to exist, deprivation of liberty would ordinarily offend the constitutional protection guaranteed under Article 21.

41. Keeping the aforesaid legal principles in view, this Court now proceeds to examine the material placed before it. The FIR, which forms the foundation of the prosecution, admittedly came to be registered against an unknown person. It is also not in dispute that the names of the present



applicants surfaced subsequently during investigation. The allegations against each applicant are not identical. The role attributed to applicant Dr. Rekha Jain principally rests upon the allegation regarding her earlier use of the disputed mobile number. The allegations against applicant Sameer Jain are founded upon his alleged use of the mobile handset and the alleged publication of the disputed post. The allegation against Rahul Jain appears to be that his involvement surfaced during technical investigation. The evidentiary value, admissibility and correctness of the material collected during investigation are matters which shall necessarily be examined during trial. At the present stage, the Court is concerned only with the question whether custodial interrogation has been shown to be indispensable. The prosecution has undoubtedly asserted that technical investigation is in progress. However, at this stage, this Court does not find any specific material placed before it indicating why the investigation cannot proceed if the applicants are directed to cooperate with the Investigating Officer by appearing as and when required, producing the relevant electronic devices, disclosing passwords or complying with such lawful directions as may be issued. The necessity of custodial interrogation must be distinguished from the necessity of investigation. Investigation may undoubtedly continue. The question, however, is whether such investigation necessarily requires incarceration of the applicants. The Hon'ble Supreme Court has repeatedly cautioned that these two concepts are not synonymous. Accordingly, while the investigation must proceed unhindered, the Court is required to independently examine whether arrest is constitutionally and legally justified



on the facts presently available.

42. Hence, after consideration to the rival submissions advanced by the rival parties, perused the case diary and the material available on record, and examined the legal position governing the grant of anticipatory bail, this Court is of the considered view that the present applications deserve to be allowed.

43. At the outset, it requires to be observed that while considering an application for anticipatory bail, this Court is not expected to undertake a meticulous appreciation of evidence or record findings touching upon the merits of the prosecution case. The Court is only required to examine whether the accusations, viewed prima facie, disclose a necessity for custodial interrogation and whether denial of liberty would be justified in the facts of the case.

44. It is not in dispute that the FIR in the present case was initially registered against an unknown person. The applicants were not named in the FIR and their names surfaced only during the course of investigation. The precise evidentiary value of the material collected by the investigating agency is a matter to be examined during investigation and, if necessary, at trial. At this stage, the Court is not expected to express any conclusive opinion on the correctness of the rival versions.

45. So far as applicant **Dr. Rekha Jain** is concerned, the material presently available indicates that the prosecution seeks to connect her with the alleged offence principally on the basis of the disputed mobile number. It is, however, the specific stand of the applicant that the said mobile number



and handset had been returned several months prior to the alleged incident. Whether that defence ultimately merits acceptance is a matter for investigation and trial. Nevertheless, at this stage, the material presently placed before the Court does not prima facie demonstrate that custodial interrogation of the applicant is indispensable.

46. Insofar as applicants **Sameer Jain** and **Rahul Jain** are concerned, the allegations are founded substantially upon electronic evidence, cyber analysis and digital material. Such evidence is capable of being collected, preserved and scientifically examined in accordance with law. The prosecution has not pointed out any specific circumstance demonstrating that such investigation cannot effectively proceed if the applicants cooperate with the Investigating Officer.

47. Another circumstance which cannot be ignored is that the prosecution case is predominantly founded upon electronic records. Investigation in such cases ordinarily depends upon forensic examination of devices, call detail records, metadata, server information and other digital evidence. Collection of such evidence is essentially scientific in nature. No specific material has been placed before this Court to indicate that custodial interrogation is indispensable for securing such evidence or that the same cannot be collected by directing the applicants to cooperate with the investigation.

48. The learned Government Advocate has submitted that investigation is still in progress and custodial interrogation is necessary. However, except making a general submission, no concrete circumstance has



been pointed out demonstrating how arrest of the applicants would materially advance the investigation. Mere pendency of investigation cannot, by itself, constitute a ground to deny the discretionary relief of anticipatory bail.

49. This Court is also conscious that the offences alleged are not punishable with death or imprisonment for life. The principles governing arrest in offences carrying comparatively lesser punishment have been authoritatively laid down by the Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar**, (2014) 8 SCC 273 , and reiterated in **Satender Kumar Antil v. CBI**, (2022) 10 SCC 51. The Hon'ble Supreme Court has consistently held that arrest is not to be made in a routine manner and that the investigating agency must satisfy itself that arrest is necessary for one or more legally recognized purposes. The power to arrest cannot be exercised mechanically merely because it exists.

50. The Constitution Bench decisions in **Gurbaksh Singh Sibbia v. State of Punjab**, (1980) 2 SCC 565 , and **Sushila Aggarwal v. State (NCT of Delhi)**, (2020) 5 SCC 1 , further emphasize that anticipatory bail is a device intended to protect personal liberty and that Courts are required to strike a balance between the right of the investigating agency to conduct a fair investigation and the fundamental right of the individual under Article 21 of the Constitution.

51. This Court also finds that all the three applicants are permanent residents, their identities are not in dispute, no material has been placed before this Court indicating that they are likely to abscond, and it has been consistently stated on their behalf that they are ready and willing to



cooperate with the investigation, appear before the Investigating Officer as and when required, and comply with every condition that may be imposed.

52. Without expressing any opinion on the merits of the allegations, and keeping in view the nature of the accusations, the role attributed to each applicant, the stage of investigation, the nature of the evidence relied upon by the prosecution, the absence of any specific material demonstrating the necessity of custodial interrogation, and the law laid down by the Hon'ble Supreme Court in *Gurbaksh Singh Sibbia (supra)*, *Siddharam Satlingappa Mhetre (supra)*, *Arnesh Kumar (supra)*, *Sushila Aggarwal (supra)*, *Satender Kumar Antil (supra)*, *Md. Asfak Alam (supra)*, *Joginder Kumar (supra)*, and *Aman Preet Singh (supra)*, this Court is of the considered opinion that the applicants have made out a fit case for grant of anticipatory bail.

53. In view of facts and circumstances of the case, but without expressing any opinion on merits of the case, these applications are allowed and in the *event of arrest*, the applicants be released on bail on executing a personal bond in the sum of Rs.1,00,000/- (Rupees One Lakh only) each with one surety each in the like amount to the satisfaction of the Arresting Officer /Investigating Authority.

54. . The applicants shall further abide by other conditions enumerated under Section 482 (2) of the B.N.S.S. and shall cooperate in the investigation, otherwise this bail order shall automatically stand cancelled.

55. Certified copy as per rules.

(RAJESH KUMAR GUPTA)
JUDGE



Vishal

25

MCRC-30127-2026