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WP-50649-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

WRIT PETITION No. 50649 of 2025*PROSECUTRIX**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Neeraj Dhamaniya - Advocate for petitioner.

Shri Brijesh Kumar Tyagi - Public Prosecutor for respondent/State.

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Reserved on : 28.01.2026

Pronounced on : 30.01.2026

ORDER

The present petition under Section 226 of the Constitution of India has been filed by the petitioner seeking transfer of investigation in crime No.558/2025 registered at Police Station Kotwali District Guna (M.P.) for offence punishable under Sections 79, 351(3) of BNS and Section 67(A) of I.T. Act to other credible agency or higher police authorities.

Learned counsel for the petitioner submits that subsequent to the registration of the FIR, Respondent No. 3 filed an application for anticipatory bail before the learned Trial Court at Guna, which came to be dismissed on merits after due consideration of the gravity of the offences and the material available on record. Being aggrieved by the said order, Respondent No. 3 preferred an application before this Hon'ble Court by filing MCRC No. 53596/2025 seeking anticipatory bail, which was also dismissed vide order dated 21.11.2025, thereby affirming the findings recorded by the learned



Trial Court. The said respondent No. 3 has not assailed it before the Hon'ble Supreme Court of India. However, to the utter shock and surprise of the petitioner, the police authorities, particularly Respondent No. 2, in connivance with Respondent No. 3, have acted in a wholly illegal and arbitrary manner by exempting Respondent No. 3 from arrest, effective investigation, and prosecution, despite rejection of her anticipatory bail application. The police have illegally extended protection from arrest by issuing a notice under Section 41A of the Code of Criminal Procedure, thereby granting de facto bail to the accused without any authority of law. Such conduct clearly amounts to shielding the accused, frustrating the course of justice, and derailing a fair investigation. In view of the aforesaid circumstances, the petitioner has been constrained to approach this Court seeking transfer of the investigation to an independent and impartial agency to ensure a fair, transparent, and unbiased investigation.

On the other hand, learned counsel for the State submits that the present petition has been rendered infructuous, inasmuch as, pursuant to issuance of notice under Section 41A of the Cr.P.C. to respondent No. 3, the investigation has already been completed and a charge-sheet has since been filed before the competent Court. In compliance with the order dated 22.01.2026, respondent No. 2 has furnished his explanation, wherein it is stated that the maximum punishment prescribed under Section 79 of the Bharatiya Nyaya Sanhita (BNS) is three years, under Section 351(3) of BNS is seven years, and under Section 67(A) of the Information Technology Act is up to five years.



It is further averred that, in view of the law laid down by the Hon'ble Supreme Court in Arnesh Kumar vs. State of Bihar, reported in (2014) 8 SCC 273, and also in light of Circular No. कमांक/अअवि/विधि/1/विविध/121/14/1021 issued by the Police Headquarters (Crime Investigation Department), State of Madhya Pradesh, containing directions to police officials regarding arrest in offences punishable up to seven years, a notice under Section 41A of Cr.P.C. / Section 35(3) of BNSS was duly served upon the accused Smt. Gagan @ Gagan Kapoor.

It is further averred that when the charge-sheet was filed before the learned Magistrate on 26.12.2025, the bail application of accused Smt. Gagan @ Gagan Kapoor was rejected and she was remanded to judicial custody. Thereafter, the accused preferred a regular bail application before the learned Additional Sessions Judge, District Guna, which was allowed vide order dated 29.12.2025, and she was released on bail upon furnishing a bail bond in the sum of Rs.25,000/-. Although the anticipatory bail application of accused Smt. Gagan @ Gagan Kapoor had earlier been rejected by this Hon'ble Court vide order dated 21.11.2025 passed in MCRC No. 53596/2025, however, since the offences alleged in the FIR are punishable with a maximum sentence of seven years, the answering respondent No. 2, strictly in consonance with the law declared by the Hon'ble Apex Court and the circular dated 08.12.2014 issued by PHQ (CID), rightly issued notice under Section 41A of Cr.P.C./Section 35(3) of BNSS to the accused.

Heard counsel for the parties and perused the record.



The conduct of respondent No.2 in the present matter reflects a disturbing and alarming disregard for the rule of law, the authority of the Court, and the basic canons of fair investigation. Despite rejection of anticipatory bail of respondent No.3 by the learned Trial Court as well as by this Court, the investigating agency deliberately refrained from arresting the accused and instead issued a notice under Section 41A of the Cr.P.C., thereby virtually granting protection from arrest to the accused and frustrating the spirit of the judicial orders. The explanation furnished by respondent No.2 seeks to justify such conduct on the basis of the judgments of the Hon'ble Supreme Court and the circular issued by the Police Headquarters. This explanation, however, is wholly unsatisfactory and unacceptable.

Where the competent courts have already declined anticipatory bail after considering the gravity of the allegations and material on record, the investigating agency is not expected to nullify the effect of such judicial orders by resorting to Section 41A of the Cr.P.C. mechanically. The conduct of respondent No.2 in issuing notice under Section 41A after rejection of anticipatory bail, without recording any compelling reasons justifying such deviation, reflects a blatant disregard for judicial orders and raises a serious apprehension of favoritism and extraneous influence.

The subsequent filing of the charge-sheet and the fact that the accused was later remanded to custody and granted regular bail do not wash away the illegality committed at the stage of investigation. An act which is illegal at its inception cannot be validated by subsequent events. The conduct of



respondent No.2, as borne out from the record, prima facie indicates deliberate misuse of authority, dereliction of duty and conduct unbecoming of a police officer, which has the effect of undermining public confidence in the criminal justice system.

This Court cannot remain a silent spectator to such acts. Maintenance of discipline, integrity and accountability in the police force is essential for preservation of the rule of law. When a police officer acts in a manner which appears to defeat the orders of the Court and shield an accused, the matter assumes grave seriousness and warrants immediate corrective and disciplinary action.

Accordingly, this Court directs the Competent Authority to forthwith initiate departmental disciplinary proceedings against respondent No.2 in accordance with law for his aforesaid conduct. The Competent Authority shall also place respondent No.2 under suspension with immediate effect pending conclusion of the departmental inquiry, so as to ensure a fair, free and uninfluenced inquiry.

It is further directed that the disciplinary authority shall appoint an officer not below the rank of Superintendent of Police as the Inquiry Officer to conduct the inquiry and shall ensure that the proceedings are concluded in a time bound manner. A status report regarding compliance of this order and progress of the inquiry shall be placed before this Court within four weeks from the date of receipt of certified copy of this order.

With the aforesaid directions, the petition stands disposed of.



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(MILIND RAMESH PHADKE)
JUDGE

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