

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.25219 of 2015

Arising Out of PS.Case No. -20 Year- 2013 Thana -KHAIRA District- JAMUI

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Binod Sah Son of Polaiy Sah resident of village - Dehridih, P.S. Khaira,
District - Jamui

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Pankaj Kumar Sinha

For the Opposite Party/s : Mrs. Rita Verma (App)

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL ORDER

3 25-08-2015

Heard learned counsel for the parties.

2. The petitioner apprehending arrest for offence under sections 147, 148, 149, 379, 353, 506 of the Indian Penal Code and sections 33, 41 and 42 of the Indian Forest Act has moved this Court for grant of anticipatory bail with the solitary defence that the allegation of petitioner being party to the alleged stone mining operation in the protected forest land of Dehridih and Manjhangai is out and out false, especially because neither the informant Forest Officer had recovered the tractor of the petitioner nor even any stone nor any type of other article used in the stone mining. Learned counsel of the petitioner in this regard has also laid stress on the aspect that the story of recovery of tractor only subsequently as recorded in paragraph 76 of the case diary would also not inspire confidence, inasmuch as the petitioner as a matter of fact has got no tractor registered in his name.



3. Learned counsel for the State, on the other hand, has opposed grant of anticipatory bail to the petitioner on the ground that the mining of stones in the protected forest area being specifically prohibited not only under the Indian Forest Act but also by the order of the Apex Court the petitioner with others found to be indulging in unauthorized and illegal mining of stones in protected forest area would not be entitled for grant of privilege of anticipatory bail, more so when there is also recovery of the tractor at the door of the petitioner.

4. In the considered opinion of this Court there are two important aspects which would disentitle the petitioner from being granted privilege of anticipatory bail. Firstly, the conduct of the petitioner who denies his involvement in the stone crushing operation by stating that the tractor was not recovered from is conscious possession. The fact regarding recovery of the tractor has not been only recorded in the case diary but also has been found by the Sessions Judge while rejecting the prayer for grant of anticipatory bail to the petitioner, wherein he had recorded as follows:

“From perusal of the case diary, it appears that the informant in his restatement para-3 and other witnesses in para- 6, 7, 8 have fully supported the prosecution case and named the petitioner in the alleged occurrence. The Dy.S.P. in his supervision note in para-22 has also found



case true against the petitioner and others. The S.P., Jamui in para-30 in his supervision note-II has also found case true against the petitioner. Although some witnesses in para- 46, 47, 65, 66 have stated that the petitioners lives outside from his village and they used to come to their village on the festival. But the investigation is still going on. From para-76 it appears that tractor of the petitioner Binod Sah has been seized by the I.O. from the door of the petitioner and seizure list was prepared.”

5. Secondly, this Court cannot shut its eyes towards the provision of Sections 33, 41 and 42 of the Indian Forest Act, especially in view of the amendment made by the State of Bihar as with regard to nature of offence and consequential punishment. While the Central Act, which the Indian Forest Act is, under section 33 lays down penalty only in form of punishment with imprisonment of a term which may extend to six months or fine which may extend to five hundred rupees. Under the Bihar Amendment the offence is punishable with an imprisonment of a minimum terms of six months which may extend to two years or with minimum fine of Rs.1,000/- which may extend to Rs.5,000/- or with both and the offence under section 33 is both cognizable and non-bailable. Thus, having regard to the intention of the State Legislature of giving added emphasis to safeguard the protected forest, this Court will have to take a rather serious view in such offences which in fact is far more grave than any individual



offence. The whole intention and the purpose of the Indian Forest Act is to save the environment because that is what is going to be the legacy to be handed over by this generation to the next generation. Such offence under the Indian Forest Act, therefore, being an offence against the State, this Court cannot close its eyes to the rampant abuse of the land of the protected forest.

6. Thus, what would really go against the petitioner again is that he has not only been named in the F.I.R. but also found to be indulging in the illegal stone mining operation from the protected forest land and such direct involvement of the petitioner is said to be supported by the recovery of the tractor.

7. The submission of the learned counsel for the petitioner that the allegation in the First Information Report will not inspire confidence because it does not contain the specific amount of loss caused to the Forest Department will be also of no use and avail, inasmuch as the mining operation of stone in the protected forest land is altogether prohibited and cannot be compensated in terms of money.

8. This Court in fact is amazed with the very casual approach and the resultant submission of the learned counsel for the petitioner who somehow in a very objectionable tone had sought to react to the aforesaid view taken by this Court. His



submission that in these cases the anticipatory bail should be granted by this Court for asking has to be repelled because the Bihar amendment in the Indian Forest Act has not been taken note by him while insisting for grant of anticipatory bail to the petitioner. It is the Bihar Amendment in the Indian Forest Act which makes the offence under the Indian Forest Act more grave in nature and the anticipatory bail can be only granted if this Court is satisfied that the petitioner has been falsely implicated.

9. No such case, however, can be made out by the petitioner in this case because it will be very difficult for him to explain as to how his name could be brought within the fold of this case by the Forest Protection Officer, who has not only clearly stated the involvement of the petitioner with six others in the illegal stone crushing operation being made by them in the protected forest land but also intimidating the informant and others forest officials including Jainandan Prasad Gupta and Rajnish Kumar, both Forester, who were on patrolling duty in the protected forest land with use of force and weapons.

10. In the considered opinion of this Court learned counsel for the petitioner infact has also some misconceived impression of the provisions of the offences of the Indian Forest Act. This Court however will not like to say anything further save



and except that the learned counsel for the petitioner should not have been so arrogant in his submissions in conveying his reaction to the observations made by this Court against the conduct of the petitioner. The Advocate though he may appear for a party still remains an Officer of the Court and he has to behave in a descent manner.

11. The Counsel s expected only to give legal advice. He cannot be expected to act in such a way in order to get some order or other in some way or the other by which are very much known to him. This conduct on the part of the petitioner as well as the Counsel would not only injure the other party in litigation but also would cause most mischievous consequence to administration of justice. This would certainly be termed as an absolute abuse of Court's process.

12. Anyone who may be a client or a Counsel, who makes an attempt to impede or undermine or obstruct the free flow of the holly stream of justice by resorting to the filing of these petitions, would cause serious damage to the institution. The Counsel is endowed with noble duties. He has not only got duty towards his client, but also to his colleague. He has not only got duty towards the Court, but also towards society. Therefore, he should see the case of his client conducted fairly and honestly. The

Advocates are responsible to the Court for the fair and honest conduct of the case. In matters of this kind, they are bound to exercise an independent judgment and to conduct themselves with a sense of personal responsibility.

13. According to the Supreme Court in the case of Harishankar Rastogi Vs. Girdhari Sharma reported in AIR 1978 SC 1019, the Bar is not different from the Bench. They are two sides of the same coin. Indeed, the Bar is an extension of the system of justice; lawyer is an officer of the Court. He is master of an expertise, but more than that, kindful to the Court and governed by high ethics. The success of the judicial process often depends on the services of legal profession. Reference in this connection may also be made to the judgment of the Supreme Court in the case of P.D. Khandekar Vs. Bar Council of Maharashtra reported in AIR 1984 (SC) 110 wherein it has been held that the members of the legal profession should stand free from suspicion and that nothing should be done by any member of the legal fraternity which may lessen any degree of confidence of the public in the fidelity, honesty and integrity of the profession.

14. The Apex Court in this regard had also pointed out, giving a wrong legal advice cannot be said to be unethical but giving an improper legal advice cannot be said to be ethical. When



a client consults with a lawyer for his advice, the client relies upon his requisites experience, skill and knowledge as a Counsel. In such a situation, the counsel is expected to give proper and dispassionate legal advice to the clients for the protection of his interest. This Court therefore would not like to say anything more, but would only remind the counsel for the petitioner what was observed by Justice Krishna Ayer in the case of Bar Council Vrs. M.V. Dabholkar reported in AIR 1975 SC 2092 by way of a word of caution for the legal profession in the following words :-

".....The Bar is not a private guild, like that of "barbers, butchers and candlestick-makers" but, by bold contrast, a public institution committed to public justice and pro bono public service. The grant of a monopoly licence to practice law is based on three assumptions : (1) There is a socially useful function for the lawyer to perform, (2) The lawyer is a professional person who will perform that function, and (3) His performance as a professional person is regulated by himself and more formally, by the profession as a whole. The central function that the legal profession must perform is nothing less than the administration of justice....."

15. Be that as it may, this Court, both in view of the nature of allegation against the petitioner coupled with the unbecoming conduct of the learned counsel for the petitioner in the court room today, while pressing the prayer for anticipatory bail of the

petitioner is not inclined to grant privilege of anticipatory bail to the petitioner.

16. This application is, accordingly, dismissed with an observation that if the petitioner would surrender, his prayer for regular bail shall be considered on its own merits without being in any way influenced by anything said in this order.

(Mihir Kumar Jha, J)

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