

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.6316 of 2015

Arising Out of PS.Case No. -187 Year- 2012 Thana -PIPRAKOTHI District-
EASTCHAMPARAN(MOTIHARI)

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Shalamgir Khan @ Chand Khan son of Late Shahzid Khan resident of
Kanthechapra P.S.- Pipra, District- East Champaran

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Anuj Kumar, Advocate

For the Opposite Party : Mr. Akshay Lal Pandit, APP

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

ORAL ORDER

3 21-05-2015

This is an application, made under Section 438 of the Code of Criminal Procedure, seeking pre-arrest bail by the petitioner, namely, Shalamgir Khan @ Chand Khan, in connection with Sessions Trial No. 933 of 2013 arising out of Piprakothi Police Station Case No. 187 of 2012 under Sections 302/120B read with Section 34 of the Indian Penal Code.

Perused the above application and materials on record including a copy of the order, dated 16.01.2015, passed, in A.B.P. No. 1635 of 2014, by the learned 3rd Additional Sessions Judge, Motihari, dismissing the said application for pre-arrest bail.

Heard Mr. Anuj Kumar, learned Counsel for the petitioner, and Mr. Akshay Lal Pandit, learned Additional Public Prosecutor, appearing on behalf of the State.

The petitioner has been summoned to appear as

an accused in exercise of power under Section 319 of the Code of Criminal Procedure in connection with Sessions Trial No. 933 of 2013 arising out of Piprakothi Police Station Case No. 187 of 2012.

Because of the fact that summons has been issued against the petitioner, he cannot, at this stage, be said to have the apprehension of being arrested. There is no question of his being arrested as on today.

It has been submitted that no further investigation is required in the present case and, therefore, the petitioner's custodial interrogation is not warranted.

What needs to be noted, while considering the present case, is that though the police has not submitted *charge-sheet* against the petitioner and kept the same pending, the fact remains that when the learned trial Court has taken recourse to Section 319 of the Code of Criminal Procedure, the implication would be that there are materials against the petitioner, which would warrant his trial. If there is no material warranting recourse to Section 319 of the Code of Criminal Procedure, the remedy of the petitioner lies in seeking quashing of the order, taking resort to Section 319 of the Code of Criminal Procedure, and also seeking stay of the proceedings of the case, if so advised.

For the purpose, however, of the present anticipatory bail, what is relevant to bear in mind is that if



there is any apprehension that the petitioner may adversely influence the witnesses of the case, it may be a ground for remanding him into custody, but reasons for such apprehension would be required to be assigned. If, however, there is no such apprehension that the petitioner would adversely influence the witnesses of the case, the petitioner would, ordinarily, be granted regular bail, when he appears, in the learned trial Court, pursuant to the summons issued against him.

Considering, therefore, the matter in its entirety and in the interest of justice, while prayer for anticipatory bail is declined, it is hereby directed that the petitioner above-named shall appear in the learned Court below and if, on his appearance in the learned Court below, he applies for bail, learned Court below shall do the needful in accordance with law bearing in mind the position of law as has been discussed above.

This application for pre-arrest bail shall stand disposed of in terms of the above observations and directions.

(I. A. Ansari, J)

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