

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.18640 of 2015

Arising Out of PS.Case No. -53 Year- 2008 Thana -BOCHHA District- MUZAFFARPUR

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Sushil Thakur @ Sushil Kumar Thakur. Son of Late Binda Thakur.
Resident of village - Raghauli, P.S.- Bisfi, District - Madhubani.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. V.N.P. Singh, Sr. Adv.

For the Opposite Party/s : Mr. R.N. Jha, (APP)

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 15-06-2015 Heard learned counsel for the parties as also perused

the averments made in supplementary affidavit filed today

relevant portion whereof reads as follows:-

"1. That the petitioner is Resident of Village- Raghauli, P.S. Bisfi, District, Madhubani and the present case has been instituted in Bochkaha P.S. in the District of Muzaffarpur, which is a far distance of about 50-60 KM from the village of the petitioner.

2. That it is relevant to state here that the First Information Report has lodged on 19.4.2008 against four unknown persons, who have ridded on two motor cycle and since the date of First Information Report to 2nd week of February 2015 neither Bochkaha Police station nor Bisphi ever came at the residential house of the petitioner in search of the petitioner. For the 1st time in the 3rd week of February 2015, Bisphi Police came at the house of petitioner in his absence in search of the petitioner. The petitioner after coming to know about the same enquired into the matter. He came to know in connection with the

present case, police came in search of the petitioner.

3. That thereafter the petitioner approached with the advocate at Muzaffarpur and obtained the certified copy of First Information Report and filed anticipatory bail before the Ld. Sessions Judge, Muzaffarpur on 23.02.15, who vide his order dated 27.02.15 passed in ABP no-357/2015 "Sushil Thakur Vs. The State of Bihar" was pleased to reject the prayer of the petitioner."

Having regard to the nature of allegation against the petitioner for offence under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act, this Court, keeping in view that the First Information Report was lodged against the unknown persons and that the involvement of the petitioner has surfaced on the confessional statement of the co-accused and also other co-accused, namely, Akhilesh Kumar and Arun Kumar Singh having similar allegations have been granted bail by this Court on 10.2.2008 and 6.1.2011 respectively vide Annexure 4 & 4/1 to the supplementary affidavit, is inclined to grant privilege of anticipatory bail to the petitioner only if it is found that the petitioner was never sought to be arrested by the police in the interregnum period of seven years prior to 3rd week of February, 2015..

In that view of the matter, this Court would direct the petitioner to surrender before the court below within a period of four weeks from today, whereafter, the court below shall look into



the case diary as also the relevant records of the court to find out as to whether the petitioner was evading his arrest and as to whether the version of the petitioner in the supplementary affidavit filed today that the police despite obtaining requisition from the court on 26.9.2008 had made effort to arrest the petitioner only in the third week of February, 2015 is correct?

If the court below on making such enquiry from the records would find that there is no documentary proof of absconding of petitioner and evading his arrest, it would release the petitioner, namely, Sushil Thakur @ Sushil Kumar Thakur shall be released on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of Judicial Magistrate, 1st, Muzaffarpur in connection with Bochaha P.S. Case No. 53 of 2008, subject to the conditions as laid down under Section 438(2) of the Cr.P.C. as also subject to following conditions:-

- (i) That both the bailors will be a close relative of the petitioner, who will undertake an affidavit giving genealogy as to how they are related with the petitioner. The bailors will also undertake to inform the court if there is any change in the address of the petitioner.
- (ii) That the affidavit shall clearly state that the petitioner is not

an accused in any other case and if he is, he shall not be released on bail.

(iii) That the bailors shall also state on affidavit that they will inform the court concerned, if the petitioner is implicated in any other case of similar nature after his release in the present case and thereafter the court below will be at liberty to initiate the proceeding for cancellation of bail on the ground of misuse.

(iv) That the petitioner will be well represented on each and every date in course of trial and if he fails to do so on two consecutive dates, his bail will be liable to be cancelled on this ground alone.

It is, however, once again reiterated that if there is documentary evidence to establish that the petitioner was actually absconding or evading his arrest for a period of seven years, he shall be taken into custody, whereafter, he will be at liberty to make a prayer for his regular bail.

(Mihir Kumar Jha, J)

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