

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.621 of 2015

Arising Out of PS.Case No. -3 Year- 2014 Thana -RAIL District- LAKHISARAI

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1. Mithilesh Kumar @ Mithlesh Kumar son of Late Ramadhar Poddar,
Resident of village- Rampur Bhikhari, Near Nilam Road, P.S.- Kotwali,
District- Munger

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rabi Bhushan, Advocate

For the Opposite Party/s : Mrs. Sharda Kumari (APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL ORDER

5 05-05-2015

Heard learned counsel for the petitioner as well as

learned APP.

2. Petitioner has prayed for grant of an anticipatory bail in the event of his arrest or surrender in connection with R.P.F Jamalpur Workshop P.S. Case No. 03/2012 registered under Section 3 of R.P. (U.P.) Act (hereinafter referred to as the 'Act').

3. Learned counsel for the petitioner submitted that the offence registered under Sections 3 of R.P (U.P) Act, happens to be non bailable, hence petitioner's prayer for grant of anticipatory bail is maintainable. To buttress such plea, referred order dated 20.01.2015 passed in Cr.Misc.No.2449/2015 where in one of the co-accused, Pal Kumar Yadav has been granted anticipatory bail.

4. Learned APP opposed the prayer.

5. Apart from merit of the case, a complex question relating to maintainability of instant petition arose, hence the same is being taken up at first instance.

6. Promulgation of the R.P. (U.P.) Act has been confined only relating to properties belonging to Railway whereunder Sections 3 and 4 are the penal provisions prescribing different mode of sentence. Section 5 suggests that the offence so registered under 3 or 4 of the Act is non cognizable, however, as per Section-6 of the Act, there happens to be special power vested to the RPF personnel to arrest an accused without having warrant. Now comes Section 8 of the Act which enlightens the issue and for better appreciation, the same is incorporated hereinbelow:-

8. Inquiry how to be made against arrested persons.-- (1) When any person is arrested by an officer of the Force for an offence punishable under this Act or is forwarded to him under section 7, he shall proceed to inquiry into the charge against such person.

(2) For this purpose the officer of the Force may exercise the same powers and shall be subject to the same provisions as the officer incharge of a police-station may exercise and is subject to under the Code of Criminal Procedure, 1898 (5 of 1898)¹, when investigating a cognizable case :

Provided that-

(a) if the officer of the Force is of opinion that

there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;

(b) if it appears to the officer of the Force that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the officer of the Force may direct, to appear, if and when so required before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior.

7. On bare perusal of Section 8, it is evident that it relates with mode of inquiry to be conducted by the force, and during said course two kinds of options are available before the RPF personnel concerning the accused. The first part wherein, he may grant bail to the accused directing the accused to be physically present before the Magistrate or may remand the accused while in other circumstance, if the complicity of accused is found doubtful, then in that event after having bond at the end of accused with or without surety, let him off directing in case so desired, may have presence before the Magistrate.

8. Against the judgment rendered by the Guwahati High Court identifying Section 3 of R.P. (U.P.) Act, to be bailable

which has also been followed in 2004 (1) PLJR 668, the matter came up before the Hon'ble Apex Court for consideration in *Union of India v. State of Assam* as reported in *2004 Cri.L.J 4647* whereunder Section 8 of the Act has been thrashed and explained and then thereafter it has been observed as under:-

5. A bailable offence is defined under Section 2(d) of the Criminal Procedure Code, 1973 (in short the 'Code'). A bare reading of the proviso to sub-section (2) of Section 8 makes the position clear that three situations are envisaged. Two of the three situations are relatable to clause (a) of the proviso. If the officer of the Force is of the opinion that there is sufficient evidence or reasonable ground of suspicion against the accused persons he shall (a) either admit him to bail to appear before a Magistrate having jurisdiction in the case or (b) forward him in custody to such Magistrate.

8. There are two options given to the officer to form opinion i.e. whether there is sufficient evidence or reasonable ground of suspicion against the accused persons. It nowhere deals with the right of the accused to get bail. The third category is contemplated by clause (b) of the proviso. It inter alia, provides that when it appears to the officer that there is no sufficient evidence or reasonable suspicion, he shall release the accused person on his executing a bond with or without surety as the officer of the Force may direct to appear if and when so required before the Magistrate having jurisdiction and shall make a full report of all the particulars of the case to his superior officer. This category deals with a case where there is absence of sufficient evidence or reasonable ground of suspicion. In such case concerned officer has the power to release accused person on his executing bonds. Therefore, the High Court was not justified in holding that all the offences under the Act are bailable. Such view is contrary to the provisions contained in Section 8 of the Act.



9. After having minute observation of the principle laid down by the Hon'ble Apex Court as referred above, it is crystal clear that though some sort of power is found available to the force relating to handling of an accused to the extent of granting bail under Clause (a) as well as asking for bond under Clause (b) in case prima facie material is found lacking, that did not command the offence to be bailable. That means to say, having power relating to grant of bail or asking for surety, will not cast cloud over the nature of offence, more particularly, mode of sentence inconsonance with the appendix having present in the Cr.P.C also suggests like so.

10. Furthermore, it is apparent from the judgment referred above, that classification of offence to be bailable and non-bailable is one aspect while power to be exercised by the force while having custody of accused is another aspect. Though, the offence has been declared to be non bailable but in certain circumstance as incorporated under Clause (2) (a) of Section 8, the force has been empowered to release the accused on bail directing him to appear before the court concerned. That means to say, in terms of sub-Section 2(a) of Section-8 of the Act, it is the force which has to distinguish the same and to act accordingly.

11. At the present moment, the learned counsel for the petitioner failed to distinguish the criteria laid down under Section 8 (2) (a) of the Act, and further failed to explain whether the allegation comes within purview of former or later part hence, suffering from such vagueness, deprived the petitioner to claim for an anticipatory bail. Hence petition is dismissed.

(Aditya Kumar Trivedi, J)

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