

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.15504 of 2015

Arising Out of PS.Case No. -266 Year- 2014 Thana -CHHATAPUR District- SUPAUL

- =====
1. Sanju Devi, Wife of Guru Sardar,
 2. Aplesh Kumar,
 3. Kanjesh Kumar,
- Both sons of Late Baleshwar Sardar.
All resident of Village Mohammadganj, P.S. Chhatapur, Dist. Supaul.
4. Arbind Sardar, son of Raghuni Sardar, resident of Village Kurmainiya,
P.S. Trivenigaj, Dist. Supaul.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Arun

For the Opposite Party/s : Mr. T.N. Thakur (APP)

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

4 09-07-2015

Heard learned counsel for the parties.

Having regard to the nature of allegation for offence under Section 364 of the Indian Penal Code and that the Informant is not an eyewitness and has come with a version by way of complaint petition at least after 23 days of the occurrence, this Court would be inclined to grant privilege of anticipatory bail to the petitioner nos. 1 and 4 who have no criminal antecedent as clearly stated in paragraph no.3 of the bail application, which reads as follows:-

"(3) That, from the perusal of the case diary it is evident that petitioner no.2 has been falsely implicated in Supaul P.S. Case 113/10, u/s- 376 of the I.P.C. & rest petitioner nos. 1 & 4 having clean antecedent and petitioner no.3 is an accused

of Supaul P.S. case no. 113/10 u/s 376 IPC."

That being so, if the petitioners, namely, 1. Sanju Devi and 4. Arbind Sardar would surrender before the court below within a period of four weeks from today, they shall be released on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of Sub Divisional Judicial Magistrate, Supaul in connection with Chhatapur P.S. Case No. 266 of 2014, subject to the conditions as laid down under Section 438(2) of the Cr.P.C. as also subject to following conditions:-

- (i) That the court below shall make verification of criminal antecedent of the petitioners and if it is found that they are accused in any other criminal case, they shall not be granted bail and would be taken into custody.
- (ii) That both the bailors will be a close relative of the petitioners, who will undertake an affidavit giving genealogy as to how they are related with the petitioners. The bailors will also undertake to inform the court if there is any change in the address of the petitioners.
- (iii) That the affidavit shall clearly state that the petitioners are not an accused in any other case and if they are, they shall not be released on bail.



(iv) That the bailors shall also state on affidavit that they will inform the court concerned, if the petitioners are implicated in any other case of similar nature after their 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.

(v) That the petitioners will be well represented on each and every date in course of trial and if they fail to do so on two consecutive dates, their bail will be liable to be cancelled on this ground alone.

The same privilege of anticipatory bail cannot be given to the petitioner no.2, namely, Aplesh Kumar and petitioner no.3 Kanjesh Kumar keeping in view that they were earlier made accused in Supaul P.S. Case No. 113 of 2010 (G.R. No. 905 of 2010) and are said to have kidnapped Jhariya Devi and Mina Devi who were witnesses in the aforesaid rape case and had gone to the court for recording of their deposition on the fateful day i.e. on 19.8.2014. In the Case Diary, it has come that both Jhariya Devi and Mina Devi have still not been recovered and, therefore, when these two petitioners are facing allegation of kidnapping them, they would not be entitled for privilege of anticipatory bail specially when their complicity in the occurrence, in hand, stands supported from the statement of several persons recorded in the

Case Diary including Satyanarayan Sardar in paragraph no.9, Deepak Sardar in paragraph no.11, Paro Devi in paragraph no.12, Fulo Sardar in paragraph no.16 and Yogendra Thakur in paragraph no.38. In their statements, they have said that since the petitioner nos. 2 & 3 were accused in the rape case in which Mina Devi was to be examined as witness, their kidnapping was on account of old enmity between them and Mina Devi. Thus, when Mina Devi is still found to be missing and the beneficiaries are petitioner nos. 2 & 3, the accused under Section 376 of the Indian Penal Code, they cannot be granted privilege of anticipatory bail both on account of allegation against them in the First Information Report as also their criminal antecedent.

Accordingly, the prayer for anticipatory bail of the petitioner nos.2 & 3, namely, Aplesh Kumar and Kanjesh Kumar is hereby rejected and if they surrender before the court below and make a prayer for bail, the same shall be disposed of on its own merit without being prejudiced by anything said in this order.

(Mihir Kumar Jha, J)

Rishi/-

U		T	
---	--	---	--