

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.7943 of 2016

Arising Out of PS.Case No. -175 Year- 2015 Thana -DAGARUA District- PURNIA

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1. Sanoj Mahaldar @ Sanoj Kumar, S/o Mohan Mahaldar,
R/o Rampur , P.S.-K Nagar, District-Purnia.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dhirendra Kr. Sinha, Adv.

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

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL ORDER

3 18-04-2016 Heard learned counsel for the petitioner and
learned Additional Public Prosecutor for the State.

This application, for grant of anticipatory bail,
arises out of Dagarua P.S. Case No.175 of 2015,
disclosing offences under Section 395 of the Indian Penal
Code.

When this matter was earlier taken up on
11.04.2016, the following order was passed:-

***"Heard learned Counsel for the
petitioner and learned Additional
Public Prosecutor for the State.***

This application, for grant of

anticipatory bail, arises out of Dagarua Police Station Case No. 175 of 2015, disclosing offences under Section 395 of the Indian Penal Code.

The petitioner is not named in the First Information Report and it appears that his named transpired in course of investigation.

Considering the gravity of the offence, I am not inclined to grant the petitioner privilege of anticipatory bail.

This application for anticipatory bail, is hereby, rejected.

The petitioner, Sanoj Mahaldar @ Sanoj Kumar, is directed to surrender before the Court below within a period of four weeks from today and seeks regular bail, if so advised. If he does so, his application for regular bail shall be considered by the learned Court below on its own merit without being prejudiced by rejection of present application for grant of anticipatory bail."

Thereafter, it was pointed out that the petitioner is a juvenile. This fact has been stated in paragraph Nos.5 and 6 of the application.

Considering the plea of the petitioner that he is a juvenile, in my opinion, this anticipatory bail application, under Section 438 of the Code of Criminal Procedure, cannot be maintained, in view of the provisions, as

contained in Sections 10 and 12 of the "Juvenile Justice (Care and Protection of Children) Act, 2000" (***hereinafter referred to as the 'Act'***).

Sub-Section (1) of Section 12 of the said Act contemplates that "*when any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety.*"

Sub-Section (2) of Section 12 of the Act, prescribes that "*when such person having been arrested is not released on bail under sub-section (1) by the officer incharge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.*"

I do not find any substance in the submission made on behalf of the petitioner that Section 438 of the Code of Criminal Procedure, puts no bar on grant of anticipatory bail in favour of a juvenile for the reason that Section 438 of the Code of Criminal Procedure will have application only, if a person has genuine apprehension of arrest. A juvenile, in conflict with law, cannot have any

apprehension of arrest, in view of clear provision under the said Act.

In view of the aforesaid provisions, the apprehension of the petitioner’s arrest, for the purpose of seeking anticipatory bail, is unfounded.

This application is, accordingly, rejected.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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