

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 34512 of 2016

Arising Out of PS.Case No. -272 Year- 2010 Thana -BARUN District- AURANGABAD

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Guddu Choudhary Son of Late Uma Choudhary @ Late Gaya Choudhary,
Resident of village- Mallah Toli, Mohania, P.O. & P.S.- Mohania, District-
Kaimur at Bhabhua

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Vikram Singh
Mr. Jyoti Ranjan Jha
Dr. Kislay
For the Opposite Party/s : Smt. Rita Verma, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

3. 09-11-2016 Heard Sri Vikram Singh, learned counsel, who was
assisted by Sri Jyoti Ranjan Jha, learned counsel for the petitioner
and learned Addl. Public Prosecutor.

The sole petitioner, who was made accused in the
F.I.R. long back in the year 2010 in Barun P.S. Case No. 272 of
2010 corresponding to N.D.P.S. Case No. 10 of 2010 registered
for offence under Sections 17, 21, 22, 25 and 27(A) of the
Narcotic Drugs & Psychotropic Substances, Act, 1985
(hereinafter referred to as 'NDPS Act'), has prayed for grant of
bail in the event of his arrest or surrender, primarily on the
ground of parity.

Learned counsel for the petitioner, by way of



referring to **Annexure – 6** to the supplementary affidavit i.e. an order dated 02-05-2011 passed in Cr. Misc. No. 13863 of 2011 by a coordinate Bench of this Court (Hon'ble Mr. Justice Dinesh Kumar Singh), has prayed for granting same relief to the petitioner. He submits that co-accused Tej Bahadur Roy, against whom there was similar accusation, has been extended the privilege of anticipatory bail by this Court and as such, the petitioner is also entitled to same relief. Besides claim of parity, it has also been argued that petitioner right from the beginning is residing in West Bengal and he has no connection with the present occurrence. Regarding delay, he submits that on the basis of ordersheet, warrant of arrest, though was directed to be issued in the year 2011, was obtained by the Investigating Officer in the year 2015. On aforesaid ground, a prayer has been made for grant of anticipatory bail.

Learned Addl. Public Prosecutor has opposed the prayer for grant of anticipatory bail. She submits that in this case, number of packets of *Heroin* were recovered from possession of one of the co-accused and on his disclosure, from another place also, recovery of *Heroin* was effected from his own house and he further disclosed the name of petitioner alongwith other person involved in the drugs trafficking. He submits that keeping in view



the seriousness of the offence, the petitioner may not be extended the privilege of anticipatory bail. He further submits that in such case, there is bar to grant even regular bail, which is prescribed under Section 37 of the NDPS Act. Only in exceptional cases and after assigning detail reason, one can be extended the privilege of bail. So far as question of anticipatory bail is concerned, once there is accusation in the F.I.R. itself, there is no question for grant of anticipatory bail.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. So far as grant of bail to co-accused is concerned, on perusal of the order dated 02-05-2011 passed in Cr. Misc. No. 13863 of 2011, whereby co-accused Tej Bahadur Roy was granted anticipatory bail, it appears that in the case, a specific stand was taken that he was owner of a bus, on which the co-accused Anil Choudhary, who was arrested and disclosed his name, was conductor and he was removed from the service prior to lodging of the case and with ill-will the co-accused had given his name and thereafter, this Court has granted the privilege of anticipatory bail. Moreover, the anticipatory bail to co-accused was granted in the year 2011. In the present case, the F.I.R. was lodged in the year 2010, in which, petitioner was named as one of the accused. It's

hardly matters as to when warrant of arrest was received by the Investigating Officer. Once in the F.I.R., there is material to show involvement of the petitioner, as accused, particularly for offences as alleged in the present F.I.R., there is no point for entertaining anticipatory bail petition.

Dismissed.

(Rakesh Kumar, J.)

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