

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39311 of 2016

Arising Out of PS.Case No. -55 Year- 2009 Thana -BEUR District- PATNA

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Hari Singh @ Hari Kant Kumar Son of Late Medani Prasad Singh, resident
of village- Nadawan, P.S. - Barh District- Patna. Petitioner/s

Versus

The State of Bihar. Opposite Party/s

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Appearance :

For the Petitioner/s : M/s. P.K.Shahi, Sr. Adv., Rajesh Kumar
and S.S. Sundaram, Advs.

For the Opposite Party : Mr. Manoj Kumar

For the State Mr. Binod Kumar No. 3, APP

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

5 29-09-2016 Heard learned counsel for the petitioner and learned
counsel for the State.

In this case, the petitioner is seeking regular bail in connection with Beur P.S. Case No. 55 of 2009 registered for offences under sections 302/34, 120(B) of the Indian Penal Code and section 27 of the Arms Act.

As per the statement made in the First Information Report, on 02.03.2009 at about 7 P.M. while the informant was in his house along with his uncle-Sanjeet Pahalwan, his younger brother, namely, Saurabh came there and informed his uncle that the person, who had come at noon, has come again and wants to meet him, upon this information, Sanjeet Pahalwan went out of his house near the gate where a person aged about 22 years keeping a slip in his hand, handed over the slip to him and while Sanjeet

Pahalwan was reading the same, all on a sudden, the petitioner and other accused persons surfaced and spread the bullet on the body of the victim whereafter one co-accused, Kanjay Kumar gave a call, communicated that “ANANT DA KAM HO GAYA HAR” and thereafter, all the six accused persons fled away on two motor cycles which were parked there.

The name of the petitioner has specifically been mentioned, as one of the accused persons participated in the commission of offence.

The plea of *alibi* has been taken that on the day of the alleged offence, the petitioner was deputed to perform the duty of ‘Pulse Polio’ and specifically placed reliance on paragraph 91 of the case diary.

The offence is alleged to have been committed at 7 0’ clock and the petitioner was deputed to perform the duty of ‘Pulse Polio’, the duty get off by 4.30 P.M.

The plea of alibi however can be seen at the trial stage.

The counsel for the petitioner has submitted that three persons have already been granted bail by this Court. Bhushan Singh @ Bhushan approached this Court in Cr. Misc. No. 5595 of 2014 and this Court granted bail on the ground that



one Rajnish Kumar @ Chuha has already been granted bail in Cr. Misc. No. 46698 of 2009, the Court had no opportunity to examine the merit of the case. Another, Mastu @ Abhishek Verma approached this Court in Cr. Misc. No. 20452 of 2010 who has also been enlarged on bail on the ground that his name transpired during investigation on the basis of confessional statement of the co-accused, namely, Brajesh Kumar Pandey @ Tinku so the order passed in the case of Mastu @ Abhishek Verma has no comparison with present petitioner and has no relevance for the purposes of this case. Third is Anant Singh @ Anant Kumar Singh who also approached this Court in Cr. Misc. No. 55500 of 2005 and this Court granted bail to him, as there is only allegation of conspiracy against him.

Though this Court while deciding the case of Anant Singh judgment of Neeru Yadav vs. State of Uttar Pradesh, Criminal Appeal No. 1272 of 2015, SLP (CR.) No. 1596 of 2015 was placed before this Court for consideration, but only the reference has been made, no details have been given in the bail order of Anant Singh which is based upon quite different facts of this case, as in the present case a direct allegation has been made against him to have actively participated in the commission of the offence and the counsel for the petitioner has produced the photo



copy of the case diary and this Court has perused the different paragraphs of the case diary and has found that the Police has collected the sufficient materials against the present petitioner except paragraph 91 of the case diary which shows that the petitioner was deputed for discharging the duty of *Pulse Polio* and the duty was over by 4.30 P.M. whereas offence has been perpetrated at 7 P.M.

The counsel for the petitioner has placed reliance on three judgments reported in **2001 (3) Supreme Today 302** (*State of Tamil Nadu vs. M/s Kerala State S.I.D. & E. Corpn. Ltd.*), has not dealt with the subject of Bail but deals with Central Sales Tax matter, so far other two judgments of this Court vide **2005 (2) PLJR 509** (*Kedar Pandey v. State of Bihar*) and **2005 (1) PLJR 609** (*Md. Shahabuddin v. State of Bihar*), have lost its significance in view of the two judgments of the Supreme Court decided in the case of Neeru Yadav vs. State of Uttar Pradesh, reported in 2015 (4) Crimes (SC) 101 and another (2014) 16 SCC 508, as in that case also the identical allegations were made, the certain persons have surfaced, spread the bullet and killed the victim. While dealing with the circumstance to grant the bail, the Court has taken into consideration the antecedent of the person concerned and nature of commission of accusation would be

relevant factor for consideration of granting of bail, reasonable apprehension of witness being tampered with or the apprehension of there being a threat for the complainant would carry weight while granting Bail.

When serious crime is alleged then the Court should exercise the power with caution and with circumspection, it should not be exercised in perfunctory manner and without application of mind. It will be relevant to quote paragraphs 10 to 17 of 2015 (4) Crimes (SC) 101, which are as follows:-

Para 10 *“In Ram Govind Upadhyay v. Sudarshan Singh, (2202) 3 SCC 598 it has been clearly laid down that the grant of bail though involves exercise of discretionary power of the Court, such exercise of discretion has to be made in a judicious manner and not as a matter of course. The heinous nature of crimes warrants more caution as there is a greater chance of rejection of bail though, however, dependent on the factual matrix of the matter. In the said case, reference was made to Prahlad Singh Bhati v. NCT of Delhi, (2001) 4 SCC 280 and thereafter the court proceeded to state the following principles:-*

“(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

Para- 11. *It is a well settled principle of law that while dealing with an application for grant of bail, it is the duty of the Court to take into consideration certain factors and they basically are, (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant, and (iii) Prima facie satisfaction of the court in support of the charge. [See Chaman Lal v. State of U.P.7).*

Para-12. *In Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496 while dealing with the court's role to interfere with the power of the High Court to grant bail to the*

accused, the Court observed that it is to be seen that the High Court has exercised this discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in catena of judgments on that point. The Court proceeded to enumerate the factors:-

“9. ... among other circumstances, the factors [which are] to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground

to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.”

Para -13. *We will be failing in our duty if we do not take note of the concept of liberty and its curtailment by law. It is an established fact that a crime though committed against an individual, in all cases it does not retain an individual*



character. It, on occasions and in certain offences, accentuates and causes harm to the society. The victim may be an individual, but in the ultimate eventuate, it is the society which is the victim. A crime, as is understood, creates a dent in the law and order situation. In a civilised society, a crime disturbs orderliness. It affects the peaceful life of the society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective. He cannot be a terror to the society; and that is why Edmund Burke, the great English thinker, almost two centuries and a decade back eloquently spoke thus:-

“Men are qualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions forge their fetters [Alfred Howard, The Beauties of Burke (T. Davison, London) 109].

Para-14. *E. Barrett Prettyman, a retired Chief Judge of US*

Court of Appeals had to state thus:-

“In an ordered society of mankind there is no such thing as unrestricted liberty, either of nations or of individuals. Liberty itself is the product of restraints; it is inherently a composite of restraints; it dies when restraints are withdrawn. Freedom, I say, is not an absence of restraints; it is a composite of restraints. There is no liberty without order. There is no order without systematised restraint. Restraints are the substance without which liberty does not exist. They are the essence of liberty. The great problem of the democratic process is not to strip men of restraints merely because they are restraints. The great problem is to design a system of restraints which will nurture the maximum development of man’s capabilities, not in a massive globe of faceless animations but as a perfect realisation, of each separate human mind, soul and body; not in mute, motionless meditation but in flashing, thrashing activity.[Speech at Law Day Observances (Pentagon, 1962) as quoted in Case and Comment, Mar-Apr 1963] ”

Para-15. *This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and*

such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner.

Para-16. *In this regard, we may profitably reproduce a few significant lines from Benjamin Disraeli:-*

“I repeat..... that all power is a trust-that we are accountable for its exercise- that, from the people and for the people, all springs, and all must exist.”

Para-17. *That apart, it has to be remembered that justice in its conceptual eventuality and connotative expanse engulfs the magnanimity of the sun, the sternness of mountain, the complexity of creation, the simplicity and humility of a saint and the austerity of a Spartan, but it always remains wedded to rule of law absolutely unshaken, unterrified, unperturbed and loyal.”*

Applying the principle as mentioned herein above in the present case, it has to be examined with circumspection, is a fit case for grant of bail.

In the present case admittedly the petitioner is facing five cases of serious nature of commission of crime under section 302 I.P.C. and also he has connection with the persons having

long criminal history and having political back ground, which has come during investigation, at the same time, it also appears that the petitioner has been declared as an absconder in Dhansar P.S. Case No. 902 of 2011 as is apparent from the order passed in A.B.P. No. 5060 of 2013.

When a person has criminal history of the heinous crime and the present case alleged devilic act of proof of allegation then petitioner may face severity of punishment inasmuch as three witnesses have already been examined, it will not be in the interest of justice to grant bail to the petitioner and accordingly the prayer for bail of the petitioner is dismissed.

It is very important fact to note that the present petitioner being an employee of the State of Bihar in the Health Department, is a history sheeter. The competent Authority must take cognizance and take curative action against him.

The court below is directed to conclude the trial within a period of nine months from the date of receipt/production of a copy of this order and report to this Court.

(Shivaji Pandey, J)

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