

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.24500 of 2017

Arising Out of PS.Case No. -146 Year- 2012 Thana -JAYNAGAR District-
MADHUBANI

=====

Birendra Yadav Son of Chandeshwar Yadav, Resident of Village- Baira,
P.S. Jainagar, District Madhubani.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Murari Narain Choudhary, Advocate
For the Amicus Curiae: Mr. Akhileshwar Prasad Singh, Sr. Advocate
For the State : Mr. Manish Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 28-06-2017

Heard Sri Murari Narain Choudhary, learned counsel for the petitioner, Sri Akhileshwar Prasad Singh, learned Senior counsel who appears as Amicus Curiae and Sri Manish Kumar, learned Additional Public Prosecutor for the State.

2. This application has been filed for grant of Anticipatory Bail to the petitioner who has been made accused in Jainagar P.S. Case No. 146 of 2012, G.R.No. 2048 of 2012, for the offences punishable under Sections 341, 323, 307, 504 and 34 of the Indian Penal Code as well as under Section 27 of the Arms Act.

3. While going through the averments made in the application, it could be noticed that this petitioner had earlier moved before this Court in Cr. Misc. No. 35569/2013, for the grant of Anticipatory Bail, and at



the time of hearing of the said application permission was sought to withdraw the same, which was, accordingly, granted vide order dated 18.12.2013, passed by a coordinate Bench of this Court. Annexure-1 to the present application is the order earlier passed on 18.12.2013. The relevant part of the said order may be quoted as under : -

*"After some arguments, learned counsel for the petitioner seeks permission to withdraw this application with a liberty to surrender before the court below within four weeks for a prayer of regular bail, which shall be considered on its own merit, without being prejudiced of instant withdrawal.
Permission is granted."*

4. Apparently, the petitioner has not surrendered before the court below since passing of the order dated 18.12.2013, and at this stage, after about 3½ years, he has filed the present case without making any statement at all in the application establishing the change of circumstance. In paragraph 10 of the application, statement has been made that petitioner could not surrender because of the illness of his father. However, even that statement is not supported by any document showing illness or such continued treatment



of his father. Earlier, when the matter was taken up, this Court raised a query as to how the present Anticipatory Bail application may be maintained without establishing a change of circumstance.

5. Today, the matter has been heard and at this stage, the learned counsel for the petitioner submits that the whole purpose behind filing of the present application is to get a fresh liberty from this Court to surrender in the court below. This submission is outrightly rejected as not being *bona fide* submission in the facts of the present case. The petitioner himself withdrew the application with a liberty to surrender before the court below within four weeks, even if he failed to surrender within the said four weeks, the order dated 18.12.2013 was not coming in his way and/or in no way creating any impediment in his way to surrender. There was no occasion for him to move this Court seeking fresh liberty. The prayer in the application is for grant of Anticipatory Bail.

6. In fact, this aspect of the matter has been discussed earlier also in several case laws and the Hon'ble Apex Court has settled the proposition of law holding that though a second Anticipatory Bail application may be maintained, but it would be



necessary to show change of circumstance for enabling the petitioner to maintain such an application for a second time. Reference, in this regard, may be made to the decision of the Hon'ble Apex Court in the case of ***Kalyan Chandra Sarkar Vs. Rajesh Ranjan alias Pappu Yadav and Anr.*** since reported in ***AIR 2005 SC 921***; and in paragraph-19 of the said judgment which reads as such:

"19. The principles of *res judicata* and such analogous principles although are not applicable in a criminal proceeding, still the Courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher Court or a co-ordinate Bench must receive serious consideration at the hands of the Court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. ordinarily, the issues which had been canvassed earlier would not be permitted to be re-agitated on the same grounds, as the same it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting."

7. In *Shahzad Hasan Khan Vs. Ishtiaq Hasan*



Khan since reported in **AIR 1987 SC 1613**; the Hon'ble Apex Court frowned the practice of filing successive bail application that too without establishing the change of circumstance. Almost all the courts of law in India are on the same line. As regards the proposition involved in the present case, a full Bench of the Hon'ble Calcutta High Court in the case of **Sudip Sen Vs. State of West Bengal** since reported in **(2010) Cr.L.J. 4628**; took a view that although there is no general bar but an application for Anticipatory Bail filed for the second time must show a ground of substantial change. Reference, in this regard, may also be made to the decision of the Hon'ble Apex Court in the case of **State of M.P. Vs. Kajad** since reported in **(2001) 7 SCC 673**; where the Hon'ble Apex Court has held that without showing change in circumstance filing of successive application would amount to seeking a review of the earlier order/judgment which is not permissible.

8. Here, I would also refer a decision of the Hon'ble Apex Court in the case of **Bar Council of Maharashtra Vs. M.V. Dabholkar** since reported in **AIR 1976 SC 242**; where the Hon'ble Apex Court observed that the learned members of the legal



profession has a prominent role in checking this obnoxious practice by certain unscrupulous litigants. The relevant paragraph-15 of the said judgment is quoted hereunder: -

"15. Now to the legal issue bearing on canons of professional conduct. The rule of law cannot be built on the ruins of democracy, for where law ends tyranny begins. If such be the keynote thought for the very survival of our Republic, the integral bond between the lawyer and the public is unbreakable. And the vital role of the lawyer depends upon his probity and professional life-style. Be it remembered that the central function of the legal profession is to function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as a vehicle of justice – social justice. The Bar cannot behave with doubtful scruples or strive to thrive on litigation. Canons of conduct cannot be crystallized into rigid rules but felt by the collective conscience of the practitioners as right:

"It must be a conscience alive to the proprieties and the improprieties incident to the discharge of a sacred public trust. It must be a conscience governed by the



rejection of self-interest and selfish ambition. It must be a conscience propelled by a consuming desire to play a leading role in the fair and impartial administration of justice, to the end that public confidence may be kept undiminished at all times in the belief that we shall always seek truth and justice in the preservation of the rule of law. It must be a conscience, not shaped by rigid rules of doubtful validity, but answerable only to a moral code which would drive irresponsible judges from the profession. Without such a conscience, there should be no judge." – and, we may add, no lawyer.

Such is the high standard set for professional conduct as expounded by courts in this country and elsewhere."

9. The judgment of Hon'ble Apex Court in M.V. Dabholkar (supra) duly indicates the duty imposed and expected from the Bar. In the opinion of this Court filing of successive Anticipatory Bail application without there being any change of circumstance needs to be discouraged at the Bar.

10. In view of the aforementioned propositions as regards maintainability of successive Anticipatory Bail, I have gone through the statement made in the present application, there is absolutely no statement at all showing any change of circumstance. After 3½ years,



the petitioner is indulged in playing hide and seek wasting the precious time of the Court in filing successive Anticipatory Bail application. This practice has to be deprecated. The Anticipatory Bail application is, thus, dismissed with a cost of Rs. 10,000/- (Rupees Ten Thousand only), which will be deposited by the petitioner with the Bihar Legal Services Authority, Patna within a period of four weeks from today.

11. At this stage, I am also of the view that henceforth whenever an Anticipatory Bail application is filed after the first rejection from the Court of learned Sessions Judge and then form this Court, the petitioner must make a specific statement in the last paragraph of the petition establishing the change of circumstance without which no Anticipatory Bail application shall be entertained.

12. Let a copy of this judgment be sent to the learned Registrar General to take further needful action including that to circulate among all concerned officers in the Registry of this Court.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	N.A.
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