

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.53169 of 2017

Arising Out of PS.Case No. -276 Year- 2016 Thana -LALGANJ District- VAISHALI(HAJIPUR)

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1. Rupesh Kumar @ Rupesh Paswan, Son of Mukhlal Paswan.
2. Tuntun Paswan, Son of Satan Paswan.
3. Mukhlal Paswan, Son of Late Ram Gulam Paswan.
4. Muntun Paswan, Son of Satan Paswan, All are resident of Village-Pakrikanth, P.S. Lalganj, District- Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ranjit Kumar Thakur

For the Opposite Party/s : Mr. Sri Amitesh Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL ORDER

4 27-11-2017 Heard learned counsel for the petitioner and the State.

The petitioner apprehends arrest in Lalganj P.S. Case No. 276 of 2016 instituted for the offence under Sections 147, 148, 149, 341, 323, 379, 354, 435, 504 and 506 of the Indian Penal Code.

It has been submitted that there is general and omnibus allegation against the petitioners. They assaulted the informant by fist and slap when he went to see his newly constructed house. It is also alleged that the accused persons torn the *sari* and *blauz* of the *Bhabhi* of the informant and snatched gold chain when she came to save him.

The court below has rejected the prayer for anticipatory



bail on the ground that the petitioners were given benefit of provision under Section 41(1) of Cr.P.C. by the police.

From bare perusal of Section 41(1) of Cr. P.C, it appears that it is not a grant of bail by the police rather it is merely notice for appearance of the accused by the police.

Section 41-A(1) of Cr.P.C. speaks:-

“[The police officer shall], in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.”

In view of provision of Section 41(1) Cr.P.C., this Court is of the view that only because the petitioners have been given benefit of provision under Section 41(1) Cr.P.C, it will not be deemed that they have been granted bail by the police in accordance with law. It is mere notice for appearance of the accused and therefore, the anticipatory bail application will be maintainable.

In the instant case the nature of allegation appears to be general and omnibus.

In such circumstances, prayer for anticipatory bail is allowed and it is ordered that the petitioners named above in the



event of their arrest or surrender in the court below within six weeks from the date of receipt/production of copy of this order, shall be released on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) each with two sureties of the like amount each in connection with Lalganj P.S. Case No. 276 of 2016 to the satisfaction of learned C.J.M., Vaishali at Hajipur, subject to condition as laid down u/S 438(2) of the Cr.P.C. with further conditions (1) bailors should be local having sufficient immovable property within the jurisdiction of the court concerned, (2) petitioners shall cooperate in the trial and shall be present on each and every date fixed by the court and absence on two consecutive dates without proper and reasonable reason, will automatically cancel bail bond of the petitioners and (3) if petitioners tamper with the evidence or the witnesses of the case, in that case, prosecution will be at liberty to move for cancellation of bail of the petitioners.

(Sanjay Priya, J)

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