

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.60362 of 2017

Arising Out of PS. Case No.-129 Year-2017 Thana- MAHARAJGANJ District- Siwan

Kanhaiya Singh, S/o- Singashan Singh, R/o- Village- Jagdishpur, Risaura,
P.S.- Maharajganj, District- Siwan.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anjani Parashar

For the Opposite Party/s : Mr. Chandrasen Prasad Singh

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 15-12-2017

Heard Mr. Anjani Parashar, learned counsel for the petitioner and Mr. Chandrasen Prasad Singh, learned APP.

The present application has been filed with a prayer for anticipatory bail in a case registered for the offences punishable under Sections 341, 323 and 324/34 of the IPC.

The prosecution case, as per the fardbeyan of Vinod Kumar Singh, recorded by ASI Balam Tiwari, Maharajganj Police station, is to the effect that on 10.07.2017 at 3 PM, the neighbour of the informant Manju Devi, Kanhaiya Singh (petitioner), Pawan Kumar and Bipin came variously armed and began assaulting the informant and his father



causing injury to them. It is alleged that Manju Devi and Kanhaiya Singh were armed with sword and farsa, while the remaining accused persons were armed with lathi. The accused persons assaulted the informant and his father causing injury to them.

Even though, all the offences alleged are bailable but treating the offence under section 324 of the IPC as non-bailable, the learned Sessions Judge, Siwan, entertained ABP No. 1204 of 2017 and rejected the prayer for anticipatory bail of the petitioner vide order dated 8.9.2017, which is order impugned in the present application.

In the considered view of this Court, it is necessary to decide as to whether Section 324 of the IPC has become non-bailable as per amendment made vide Code of Criminal Procedure Amendment Act of 2005 (Act 25 of 2005) (hereinafter referred to as '2005 Act'), or is still bailable.

It appears from the record that co accused Manju Devi has been granted anticipatory bail by a bench of this court vide Cr. Misc. No. 50324 of 2017 treating the case under section 324 IPC to be a non-bailable one, whereas, co accused Bipin Kumar Singh and Anr. have been granted



regular bail vide Cr. Misc. No. 52595 of 2017 by another bench of this Court.

It is contended by learned counsel for the petitioner that Section 324 of the IPC though has been made non-bailable by virtue of amendment made by Code of Criminal Procedure (Amendment) Act of 2005 (hereinafter referred as 2005 Amendment for brevity), but any notification to that effect has not been issued till date, whereas any amendment becomes effective only from the date of notification. Hence, the offence under Section 324 IPC continues to be bailable.

Learned counsel for the petitioner has relied upon an unreported judgment of Bombay High Court dated 14th of December, 2012 (Mr. Chandra Kanjappa Kuchchikurwe Vs. State of Maharashtra & Anr), wherein it has been held that since Section 324 IPC has not been notified rendering it non-bailable till date, hence offence punishable under Section 324 of the IPC continues to be a bailable offence. Paragraph no.10 of the judgment reads as follows:-

“If no notification giving effect to the amendment in question i.e. amendment to the Fifth Column in the entry relating to “Section 324 of the IPC”, has been issued till today, (which aspect is undisputed) it means



that the offence punishable under Section 324 of the IPC, continues to be a “bailable” offence.”

Mr. J.N. Thakur, learned APP has not controverted this fact that the notification in pursuance to the Amendment Act, 2005 has not been issued till date.

Schedule I of the Code of Criminal Procedure classifies the offences under IPC into six clauses. Section 324 IPC has been classified in following manner:

Section	Offence	Punishment	Cognizable or Non-cognizable	Bailable or non-bailable	By what Court triable
1	2	3	4	5	6
...324	Voluntarily causing hurt by dangerous weapons or means.	Imprisonment for 3 years, or fine, or both	Cognizable	Non-bailable ¹	Any Magistrate

By the 2005 Amendment Act various amendments in the Code were made. Section 42 of the said Act amended Ist Schedule of the Code of Criminal Procedure. Clause (f) (iii) of Section 42 of the 2005 Amendment Act amended Section 324 IPC whereby the offence under section 324 rendered the same non-bailable, which was earlier bailable. Section 42 (f)(iii) of the Code of Criminal Procedure Amendment Act, 2005 reads as follows:

“(iii) section 324, for the word “Ditto”, the word “Non-bailable” shall be substituted.”

1 Substituted by Act 25 of 2005,S.42, for “Bailable”.



Sub-section (2) of Section 1 of the Criminal Procedure Amendment Act, 2005 provides the date of coming into force of such amendment, which reads as follows:

“(2) Save as otherwise provided in this Act, it shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint.”

Sub-section (2) of Section 1 clearly suggests that the amendment was to be introduced from the date of notification in the Official Gazette. The above provision suggests that only one notification was to be issued for all the amendments but by Code of Criminal Procedure (Amendment) Amending Act 2006, (Act 25 of 2006). Section 1 of Code of Criminal Procedure (Amendment) Act of 2005 has been amended. Section 2 of Code of Criminal Procedure Amendment Act 2006 reads as follows:

“2. In the Code of Criminal Procedure (Amendment) Act, 2005, in section 1, in sub-section (2), after the words “by notification in the official Gazette, appoint”, the words “and, different dates may be appointed for different provisions of this Act” shall be inserted.”

The aforementioned amendment suggests that it was



open for the Central Government to appoint different dates to bring into force the different amendments proposed vide 2005 Amendment Act. The same reads as follows:

“(2) Save as otherwise provided in this Act, it shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint, and different dates may be appointed for different provisions of this Act.”

The Ministry of Home Affairs, Government of India vide notification dated 21.6.2006 notified the amendment made vide Code of Criminal Procedure Amendment Act 2005 (Act 25 of 2005). The Central Government appointed 23rd June as the date on which the provision of amended Act were notified except the provision under sections 16, 25, 28a, 28b, 38, 42a, 42b 42(f)(iii) and (iv) and 44a to be notified. The said notification reads as follows:

“S.O. 923(E) – In the exercise of the powers conferred by sub-section (2) of Section 1 of Code of Criminal Procedure (Amendment) Act, 2005 (No. 25 of 2005), the Central Government hereby appoints the 23rd June, 2006, as the date on which the provisions of the said Act, except the provisions of sections 16, 25, 28(a), 28(b), 38, 42(a), 42(b) 42(f) (iii) and (iv) and 44 (a),



shall come into force.”

Kerala High Court in the case of V.P. Chandran & Ors.
Vs. State of Kerala & Anr. while considering the same
issue in Bail Application No. 6129 of 2006, observed as
follows:

“Under Section 42(f)(iii) against Section
324 IPC, in fifth column of First Schedule of
Cr.P.C., the word ‘bailable’ is deleted and ‘non
bailable’ is included. However, because of the
non implementation of Section 42(f)(iii) of the
Code of Criminal Procedure (Amendment)
Act, 2005, the offence under section 324 IPC
still continues to remain as bailable.”

Hence, from the notification of 2006 also, it appears
that amendment under Section 42(f)(iii) of the Amendment
Act 25 of 2005 whereby Section 324 IPC was made non-
bailable from bailable, still awaits its notification.

It is relevant to refer here that vide Section 28 of
Amendment Act of 2005, Section 320 of the Code of
Criminal Procedure, which deals with compounding of the
offence, has been amended. Section 28 (a) of the said Act
amended Section 324 IPC from compoundable to non-
compoundable offence under Section 320 Cr. P.C., which
was earlier compoundable with the permission of the court



till coming into force of the Code of Criminal Procedure (Amendment) Act, 2005. The said Act introduced amendment in the Table appended to Sub-section (2) of Section 320 of the Cr. P.C. so as to make the offence under Section 324 IPC non-compoundable. Though, the Act 25 of 2005 was published on 23.06.2006, but it was to take effect only from the date of its notification. Section 28 reads as follows:-

“28. Amendment of Section 320 – In Section 320 of the Principal Act, in the Table under sub-section (2), -

(a) the words “Voluntarily causing hurt by dangerous weapons or means” in column 1 and the entries relating thereto in columns 2 and 3 shall be omitted;”

The above issue, whether the offences under Section 324 IPC has become non-compoundable in view of the Amendment Act of 2005, came for consideration before the Supreme Court, in the case of Manoj & Another Vs. State of Madhya Pradesh, reported in (2008) 9 SCC 116, where it has been held that since notification has not yet been issued, hence the said Amendment by Act 25 of 2005, has not yet come into force. Paragraph Nos. 13 and 14 read as



follows:

“13. We have examined the provisions of Section 320 of the Code of Criminal Procedure [for short ‘the Cr.P.C.’] which deals with compounding of offences. Section 320(1) of the Cr. P.C. provides that the offences punishable under the Sections of Indian Penal Code specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table. Under Sub-section (2) of Section 320, offences punishable under the Sections of the Indian Penal Code, specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table. Voluntarily causing hurt by dangerous weapons or means by the accused constitutes an offence under Section 324 IPC which can be compounded by person to whom hurt is caused with the permission of the Court in terms of Sub-section (2) of Section 320 Cr.P.C.

14. It requires to be noticed that Cr.P.C. (Amendment) Act, 2005 [Act No. 25/2005] amended Section 320 of the Code and in the Table under Sub-section (2) (a) the words "voluntarily causing hurt by dangerous



weapons or means" in column 1 and the entries relating thereto in columns 2 and 3 has been omitted. But the said amendment by Act No. 25 of 2005 has not yet been brought into force. Therefore, the offence under 324 is still compoundable with the permission of the Court.”

The above said ratio laid down in the case of Manoj (supra) has been followed by the Supreme Court in the case of Mathura Singh and Ors. Vs. The State of Uttar Pradesh, reported in (2009) 13 SCC 420.

In view of the discussions as above, it can be safely concluded that Section 324 of the IPC still continues to be a “Bailable offence” for the sole reason that Section 42 of the 2005 Amendment Act, which proposed to make it “Non-Bailable” has not been notified till date.

The petitioner is charged with the offences punishable under Sections 341, 323 and 324/34 IPC, which are all bailable, hence the anticipatory bail application of the petitioner is not maintainable.

Ex consequenti the case of this petitioner requires to be considered by the learned court below under Section 436 of the Cr. P.C. which deals with the grant of bail in Bailable



offences.

Accordingly, this application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/Anil/-

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