

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.62208 of 2017

Arising Out of PS.Case No. -451 Year- 2016 Thana -BIHARSHARIF District- NALANDA
(BIHARSHARIFF)

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Shiv Shankar Prasad Sinha S/o Shri Sita Ram Prasad, R/o Village-
Pachetan, Post and P.S.- Asthawan, District- Nalanda (Bihar), Pin Code-
803107.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Ms. Soni Shrivastava
Mr. Abhishek Anand
Mrs. Madhuri Kumari
For the Informant : Mr. Anil Singh
Mr. Amrit Anunay
For the State : Mr. Bharat Bhushan

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

4 07-02-2018

Heard Ms. Soni Shrivastava, Ld. Advocate for the petitioner
and Shri Anil Singh, Ld. Advocate for the informant as well as Shri Bharat
Bhushan, the learned counsel for the State.

The petitioner seeks anticipatory bail in connection with Bihar Thana
P.S. Case No. 451 of 2016 registered for the offence punishable under
Sections 420, 465, 466, 467, 468, 471 and 409 of the Indian Penal Code.

At the outset, the learned counsel for the informant submits that since
the learned court below has issued summons under Section 82 of the Code of
Criminal Procedure by an order dated 04.01.2018, the present anticipatory
bail petition is not maintainable. In this regard, the learned counsel for the
informant heavily relies upon a judgment reported in **(2014) 2 SCC 171**
(State of Madhya Pradesh vs. Pradeep Sharma). It would be relevant to
quote paragraphs no.-16 and 17 of the said Judgment herein below:-

"16) Recently, in [Lavesh vs. State \(NCT of Delhi\)](#), (2012) 8



SCC 730, this Court, (of which both of us were parties) considered the scope of granting relief under [Section 438](#) vis-à-vis to a person who was declared as an absconder or proclaimed offender in terms of [Section 82](#) of the Code. In para 12, this Court held as under:

“12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as “absconder”. Normally, when the accused is “absconding” and declared as a “proclaimed offender”, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of [Section 82](#) of the Code he is not entitled to the relief of anticipatory bail.”

17)In the case on hand, a perusal of the materials i.e., confessional statements of Sanjay Namdev, Pawan Kumar @ Ravi and Vijay @ Monu Brahambhatt reveals that the respondents administered poisonous substance to the deceased. Further, the statements of witnesses that were recorded and the report of the Department of Forensic Medicine & Toxicology Government Medical College & Hospital, Nagpur dated 21.03.2012 have confirmed the existence of poison in milk rabri. Further, it is brought to our notice that warrants were issued on 21.11.2012 for the arrest of the respondents herein. Since they were not available/traceable, a proclamation under [Section 82](#) of the Code was issued on 29.11.2012. The documents (Annexure-P13) produced by the State clearly show that the CJM, Chhindwara, M.P. issued a proclamation requiring the appearance of both the respondents/accused under [Section 82](#) of the Code to answer the complaint on 29.12.2012. All these materials were neither adverted to nor considered by the High Court while granting anticipatory bail and the High



Court, without indicating any reason except stating “facts and circumstances of the case”, granted an order of anticipatory bail to both the accused. It is relevant to point out that both the accused are facing prosecution for offences punishable under Sections 302 and 120B read with Section 34 of IPC. In such serious offences, particularly, the respondents/accused being proclaimed offenders, we are unable to sustain the impugned orders of granting anticipatory bail. The High Court failed to appreciate that it is a settled position of law that where the accused has been declared as an absconder and has not cooperated with the investigation, he should not be granted anticipatory bail.”

It is submitted by the learned counsel for the informant that in view of the fact that the petitioner herein has been absconding, though not declared a proclaimed offender or an absconder, as well as the fact that the learned court below has issued summons against the petitioner herein under Section 82 of the Code of Criminal Procedure, the aforesaid judgment rendered by the Hon’ble Apex Court in the case of Pradeep Sharma shall squarely cover the present case.

Per contra, the learned counsel for the petitioner has submitted that it is a well settled law that only when an accused is absconding and has been declared as a proclaimed offender, he is not entitled to relief of anticipatory bail, as has been held by the Hon’ble Apex Court in the case of **Lavesh vs. NCT of Delhi** reported in **(2012) 8 SCC 730**. The learned counsel for the petitioner has further submitted that even the aforesaid judgment rendered by the Hon’ble Apex Court in the case of Pradeep Sharma (supra) has held as follows:-

“The High Court failed to appreciate that it is a settled proposition of law that where the accused has been declared as an absconder and has not cooperated with the



investigation, he should not be granted anticipatory bail.”

It is also submitted that the aforesaid judgment referred to by the learned counsel for the informant also takes into consideration the fact that the offences are serious in nature since the accused are facing prosecution for offences punishable under sections 302 and 120B read with section 34 of the Indian Penal Code as well as the fact that the respondent accused are proclaimed offenders.

Having regard to the law laid down by the Apex Court in the case of Lavesha (supra) as also in the case of Pradeep Sharma (supra), I am of the considered view that only in cases where the accused persons have been declared as a proclaimed offender in terms of Section 82 of the Criminal Procedure Code, such accused persons are not entitled to the relief of anticipatory bail. In the present case, the learned Chief Judicial Magistrate, Nalanda at Bihar Sharif by his letter dated 19.01.2018 has reported that only process has been issued under Section 82 of the Cr.P.C. against the petitioner herein and the charge sheet has not been submitted till date, hence the obvious inference is that the petitioner has not been declared a proclaimed offender as yet, a position which is not denied by the learned counsel for the informant, therefore, in my considered opinion there is no impediment in considering the prayer of the petitioner for grant of anticipatory bail.

Now, coming to the merits of the present case, the complainant is stated to have filed a complaint dated 26.09.2016 bearing Complaint Case No. 1049C of 2016 before the learned court of Chief Judicial Magistrate, Nalanda at Bihar Sharif, inter alia alleging therein that the petitioner is son of Sitaram Prasad and in the year 1995, he passed the matric examination from Birchand Patel School, Pesaur, P.S. Rahuai, District-Nalanda and his date of



birth mentioned in the certificate is 24.3.1980 whereafter, on the basis of the said certificate, the petitioner was appointed as Assistant Ahlmad in the Tis Hazari court at New Delhi. It is further alleged that on account of the petitioner having threatened the Metropolitan Magistrate, Tis Hazari Courts, an FIR was lodged against him, pursuant whereof the petitioner resigned from his job in the year 2015. Thereafter, the petitioner is alleged to have changed his name to Ashish Ranjan and had appeared in the Board examination from National High School, Shekhanan whereafter, he received the Board certificate upon passing the examination wherein his date of birth has been mentioned as 04.2.1984 and on the basis of the same, he got appointment in the Defence Ministry where he worked in between the period 2012-15. Nonetheless, the petitioner is said to have resigned from the Defence Ministry in the year 2015. Finally it has been alleged that the petitioner has obtained two certificates in two names containing two sets of date of births, hence it is necessary to find out the truth.

On the basis of the said complaint, upon reference of the mater by the learned Magistrate under Section 156(3) of the Cr.P.C, the present FIR bearing Bihar Thana P.S. 451 of 2016 was instituted against the petitioner herein.

The learned counsel for the petitioner has submitted that in sum and substance, the allegation in the present case is that the petitioner herein has changed his name and appeared in the Board examination as well as obtained two matric certificates under different names and both of the said certificates contain different dates of birth. As far as the allegation regarding threatening the Metropolitan Magistrate of the Tis Tazari Court is concerned, separate proceeding is going on in which the petitioner has already been granted bail.



It is submitted that as far as the allegation regarding the petitioner obtaining appointment in the defence Ministry under different names is concerned, there is no material on record to show that the person who had worked at the Tis Hazari Court and the person who had worked at the Defence Ministry vis-à-vis the petitioner herein are one and the same person. Lastly, it is submitted that there is great animosity between the informant of the present case and the petitioner herein, hence the present case has been initiated by the informant herein. It is also contended that the petitioner is ready to join investigation and in view of the fact that no concrete material has come on record to show the complicity of the petitioner in the alleged crime, the petitioner should be granted anticipatory bail.

Per contra, the learned counsel for the informant has submitted that the petitioner is a habitual offender and is in the habit of impersonation and seeking employment by committing forgery. The learned counsel for the informant has also referred to paragraph no. 54 of the case diary and submitted that Sub Inspector of Police of Asthawa Police Station has written that the accused Shiv Shankar Prasad Sinha and Ashish Ranjan are one and the same person, however, upon perusal of the criminal records maintained at Asthawa Police Station, the name of the said person was not found enlisted therein.

The learned counsel for the petitioner has also referred to paragraph no. 6 of the case diary to show that upon perusal of the records of the National High School, Shekhanan, Bihar Sharif, Nalanda, it has been found that one Ashish Ranjan has given matric examination in the year 2001 from the said school and has further stated that from perusal of paragraph no. 15 of the case diary it has transpired during the course of inspection of the records



of Birchand Patel High School, Pesaur that one Shiv Shankar Prasad Sinha had given the matric examination in the year 1995. It is submitted that the paragraphs no. 6 and 15 of the case diary would show that the name of the father of Ashish Ranjan and Shiv Shankar Prasad Sinha has been mentioned as Sita Ram Prasad. In such view of the matter, the learned counsel for the petitioner submits that the present case is a clear case of cheating and impersonation.

I have perused the materials on record as well as the case diary and heard the learned counsel for the parties. I find that the present case arises out of previous enmity between the complainant and the petitioner herein and some litigation also appears to be going on in between them. It is intriguing that the complainant is greatly interested in the on goings in the life of the petitioner herein which is apparent from the fact that the complainant is in possession of the minutest details about the petitioner herein. Nonetheless ,coming to the merits of the present case, I find that the only live and subsisting allegation in the present case, which is not a subject matter of earlier litigations, is the allegation regarding the petitioner having changed his name and obtained a fresh matric certificate with a new date of birth and on the said basis obtaining employment in the Defence Ministry. The records would show that no investigation has been conducted on the issue as to whether the petitioner herein had sought employment in the Defence Ministry or not and as to whether the accused Shiv Shankar Prasad Sinha and Ashish Ranjan are one and the same person, which could have been verified by various means. However, according to the investigation conducted till date, it has only been ascertained that Ashish Ranjan had passed matric from National High School, Shekhanan and Shiv Shankar Prasad Sinha had passed



matric from Birchand Patel High School, Pesaur but there is no material on record to suggest that the aforesaid two persons are one and the same person and it appears that the same requires further investigation by the Investigating Agency and this fact is also not disputed by the learned counsel for the informant who has also failed to show from the records that either the petitioner herein is the person who had sought employment in the Defence Ministry or the petitioner herein as well as one Ashish Ranjan are one and the same person.

Having regard to the facts and circumstances of the case, I deem it fit and proper to admit the petitioner to the privilege of anticipatory bail but subject to certain conditions mentioned in the paragraphs herein below.

Accordingly, I direct the petitioner above named to be admitted to the privilege of anticipatory bail in the event of his arrest or surrender before the learned court below within a period of six weeks from today on furnishing bail bond of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Nalanda in connection with Bihar Thana P.S. Case No. 451 of 2016 subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

It is further directed that the petitioner shall join investigation and would be present at the place as directed by the Investigating Agency for the purposes of enquiry and in case the prosecution finds that the petitioner is not cooperating in the investigation, it would be free to move this Court for cancellation of the privilege of anticipatory bail being granted by this order.

It is further directed that the petitioner would mark his presence before the Officer-in-Charge of the concerned Police Station at 10:00 A.M.



on Monday of every week and in case of two consecutive defaults, in appearance before the concerned Police Station, the present privilege of bail shall stand cancelled automatically and the petitioner would be taken into custody forthwith.

(Mohit Kumar Shah, J)

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