

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.52229 of 2017

Arising Out of PS. Case No.-56 Year-2017 Thana- SIMRIBAZAR District- Darbhanga

Arjun Paswan, S/o Late Ram Bahadur Paswan, Residence of Vill- Samaul
Chauri, P.S.- Sakri Distt- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Bimal Thakur @ Biltu Thakur, S/o Late Moti Thakur, Resident of Vill/Mohalla- Phulkahi, P.S.- Raiyam, Distt- Darbhanga.
3. Lalan Thakur, S/o Late Moti Thakur, Resident of Vill/Mohalla- Phulkahi, P.S.- Raiyam, Distt- Darbhanga.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Kedar Jha
For the Opposite Party/s : Mr. Sanjay Kumar Sharma

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

6 22-11-2018 The petitioner who is the informant of Simri P.S. Case No. 56 of 2017, which was initially instituted for the offences under Sections 302 and 201 of the I.P.C. and in which, as has been argued on behalf of the petitioner, Section 376 of the I.P.C. and provisions of SC/ST (Prevention of Atrocities) Act, 1989 also have been added later on, seeks cancellation of anticipatory bail which was granted to them by learned Sessions Judge, Darbhanga vide his order dated 28.07.2017 passed in A.B.P. Nos. 773 of 2017 and 774 of 2017, respectively, on the ground that on non-existent grounds, such relief has been granted to



Opposite Parties No. 2 and 3.

The F.I.R. lodged by the petitioner clearly states that his daughter/Pinki Kumari, who was a minor girl, was taken by one Rakesh Kumar Thakur along with Opposite Parties No. 2 and 3 on a motorcycle to an unknown destination. Later, when the petitioner (father of the deceased) learnt about the Opposite Parties No. 2 and 3 and Rakesh Kumar Thakur, having taken away his daughter, he went to the house of Rakesh Kumar Thakur, where he did not find anybody. Later, through some unknown source, he learnt that his daughter's dead body is lying in the DMCH. He went to the DMCH and found the dead body of his daughter. After post-mortem, it was found that the deceased was sexually tormented as well and that she was pregnant. During the course of investigation also, some of the witnesses have stated that the deceased was taken on a motorcycle by Rakesh Kumar Thakur along with Opposite Parties No. 2 and 3, who happen to be the maternal uncles of aforesaid Rakesh Kumar Thakur.

From the perusal of the order dated 28.07.2017



whereby anticipatory bail has been granted to Opposite Parties No. 2 and 3, it appears that the learned court below was swayed by the fact that the Opposite Parties No. 2 and 3 are residents of a place which is about 12 kms away from the house of Rakesh Kumar Thakur. This a most specious plea taken by the learned court below, especially in view of the fact that it was clearly stated in the F.I.R. as also in the investigation papers that Opposite Parties No. 2 and 3 are maternal uncles of the aforesaid Rakesh Kumar Thakur.

The anticipatory bail was granted to the Opposite Parties No. 2 and 3 during the period when the investigation had not yet been concluded.

A serious case like this requires a more careful approach by the learned Sessions Judge in exercising its powers under Section 438 of Code of Criminal Procedure, 1973.

Mr. Ram Bali Jha, learned Advocate, who has appeared for Opposite Parties No. 2 and 3, who were noticed, has submitted that rightly or wrongly, once anticipatory bail has been granted, that cannot be cancelled



on the sole ground that the discretion was not used by the Sessions Judge in a proper manner. There is no allegation of tampering with the evidence and therefore any interference with the order passed by the learned Sessions Judge would be in breach of the settled position of law that bail ought not to be cancelled on casual grounds.

This Court is of the view that in a case of this kind where there are specific averments against the Opposite Parties No. 2 and 3 and also taking into account that a young girl who had not even attained majority had become pregnant and was killed, the Opposite Parties No. 2 and 3 did not deserve anticipatory bail. The investigations reveal that the nephew of Opposite Parties No. 2 and 3 had developed an amorous relationship with the deceased and the family members of the deceased had become agreeable for the marriage because of their poverty and aforesaid Rakesh Kumar Thakur being of good financial worth. This was not acceptable to the family members of Rakesh Kumar Thakur.

Considering the entire aspects in a holistic manner,



this Court is of the view that the order dated 28.07.2017 requires to be interfered with.

The anticipatory bail granted to the Opposite Parties No. 2 and 3 is hereby cancelled.

They are directed to surrender before the court below within a period of two weeks from the date of passing of the order or production/communication of a copy of this order before the court below.

In case they do not surrender before the court below within the aforesaid period, the court below shall take all coercive steps for securing the arrest of the Opposite Parties No. 2 and 3.

The petition is allowed.

(Ashutosh Kumar, J)

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