

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.13275 of 2018

Arising Out of PS.Case No. -15 Year- 2016 Thana -MAHILA P.S. District- NALANDA
(BIHARSHARIFF)

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Raj Ballabh Prasad @ Raj Ballab Prasad Yadav @ Raj Ballabh Yadav
..... Petitioner/s

Versus

The State of Bihar

..... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Y.C. Verma, Sr. Adv.

For the Opposite Party/s : Mr. S. Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

2 07-03-2018 Instant application has been filed by the petitioner for grant of provisional bail, who has been in custody in connection with Nalanda Mahila P.S. Case No. 15 of 2016 registerd for the offences punishable under Sections 366A, 370, 370A, 376, 212, 109, 420 and 120B of the Indian Penal Code.

Submission of learned senior counsel for the petitioner is that budget session of Bihar Vidhan Sabha is going on and petitioner being an elected representative of his constituency is entitled for attending the budget session, otherwise, he may not be able to justify the role of public representative and will be deprived of raising the voice of people of his constituency in the budget session and further it is his democratic right to represent his constituency in the budget session. It has also been argued that earlier in such occasions MLAs were granted the privilege of



provisional bail to attend the session. In support of his contention, he drew the attention of this court towards the order passed by coordinate Bench of this Court in Cr. Misc. No. 714 of 2016 dated 03.08.2016 and submitted that though the said Cr. Misc. was dismissed as withdrawn, however, observation was made that “it is expected from the learned court below to consider any such application being filed in future without being prejudiced by the order of this Court keeping in view of the fact that similarly placed MLAs have been permitted by the learned court below to attend the Assembly Session”.

It has further been submitted that the case of the petitioner is similar and he is also entitled for grant of provisional bail to attend the budget session of assembly. It has also been argued that earlier petitioner has prayed for regular bail, which was dismissed on merit but the present application is for grant of provisional bail to attend the budget session of assembly. Further argument that the petitioner had once been granted the privilege of provisional bail at the time of death of his father and he has not misused the said provisional bail as such he is entitled for grant of provisional bail this time as well.

Learned counsel Mr. S. Dayal appearing on behalf of the State vehemently opposed the prayer for provisional bail.



For disposal of the present application, some certain facts are necessary to be incorporated: Earlier petitioner has been granted bail by this Court in Cr. Misc. No. 35951 of 2016, vide order dated 30.09.2016 and against the said order, the State moved the Hon'ble Apex Court in Cr. Appeal No. 1141 of 2016 and the same was allowed the order passed by this Court was set aside and it was directed that if petitioner has already been released, he shall surrender and/or taken into custody forthwith and in case, he is still in jail custody, he will continue in jail as consequence of the judgment. Thereafter, the petitioner again preferred an application for grant of bail in Cr. Misc. No. 52656 of 2017 on the ground that the State has caused unnecessary delay in disposal of trial, a petition under Section 311 Cr.P.C. has been filed for summoning the Nodal Officers, which was rejected by the trial court vide order dated 29.08.2017, against which the State preferred Cr. Rev. No. 975 of 2017, before this Court causing unnecessary delay. During pendency of the aforesaid application, an Interlocutory Application has also been filed on behalf of the petitioner stating that in Cr. Rev. No. 975 of 2017, this Court has allowed the state to convert the same into an application under Section 482 Cr.P.C. and as such it will cause much delay and it was stated that Session of Vidhan Sabha has commenced, he had also annexed at that



time, the notice issued under the signature of Secretary, Bihar Vidhan Sabha and it was submitted that Vidhan Sabha will be convened for the period from 27.11.2017 to 01.12.2017 and as such the petitioner being the Member may be allowed to participate in proceeding of Vidhan Sabha. The aforesaid application of bail and I.A. was disposed of by this Court vide order dated 24.11.2017 passed in Cr. Misc. No. 52656 of 2017.

Against the said order, petitioner again preferred an S.L.P. (Crl.) No. 9515/2017 and the same was disposed of by the Hon'ble Apex Court with following direction.

“Though we are not inclined to interfere with the impugned order passed by the High Court, at the same time, we feel that the petition under Section 482 of the Code of Criminal Procedure pending in the High Court should be decided expeditiously.”

Now the present application has been filed for grant of provisional bail on the ground of participating in the budget session of assembly and a drew the attention towards the observation made in Cr. Misc. No. 714 of 2016 to state that some MLAs were granted the bail to attend the Assembly Session. However, from perusal of Annexure -1, it appears that application was dismissed as withdrawn with an observation as incorporated



above and there was no direction to the trial court. No doubt, petitioner is a public representative of his constituency and budget session of Assembly has commenced from 26.02.2018 but it appears that earlier application of the petitioner for grant of bail as well as I.A. on the ground of attending the Vidhan Sabha Session was to be held at that time, has already been rejected by this Court on merit, against which, the petitioner preferred an S.L.P. (Crl.) No. 9515/2017 before the Hon'ble Apex Court, by which the Hon'ble Apex Court has declined to interfere with the impugned order passed by this Court and disposed of the same with certain observation.

As such, I am not inclined to release the petitioner on provisional bail. His application for grant of provisional bail is accordingly dismissed.

(Vinod Kumar Sinha, J)

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