

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.12029 of 2019

Arising Out of PS. Case No.-58 Year-2009 Thana- DUMARIYA District- Gaya

1. PRABHU SHARMA @ PRABHU MISTRY Son of Late Gaukaran Mistry @ Shankar Mistry R/o village- Panchmah, P.S- Dumariya, Distt.- Gaya
2. Rajendra Sharma @ Rajendra Mistry Son of Prabhu Sharma @ Prabhu Mistry R/o village- Panchmah, P.S- Dumariya, Dist.- Gaya
3. Dharmendra Sharma @ Dharmendra Mistry @ Dhamendra Sharma Son of Prabhu Sharma @ Prabhu Mistry R/o village- Panchmah, P.S- Dumariya, Dist.- Gaya

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Md. Javed Jafar Khan

For the Opposite Party/s : Mr. Manish Kumar No2

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

5 09-07-2019 Heard learned Counsel for the petitioners and learned
Additional Public Prosecutor for the State.

This application, for grant of anticipatory bail, arises out of Dumariya Police Station Case No. 58 of 2009, disclosing offences under Sections 302/328/120B/34 of the Indian Penal Code.

The allegation against the petitioners is that the daughter of petitioner no. 1 was married to the younger brother of the informant, namely, Anil Mistry (deceased), who has allegedly been administered poison by the petitioners while he was in his sasural.

Learned Counsel for the petitioners submits that the petitioners are innocent and the deceased is none other than the



son-in-law of the petitioner no. 1 and the allegation of administering poison is palpably incorrect. He has further submitted that the deceased was in the habit of drinking and on the date of occurrence, he had also consumed liquor, as would be evident from the statement made in paragraph 9 and onwards of the case diary.

On the other hand, learned Additional Public Prosecutor submits that the case has been instituted in the year 2009 and the petitioners are absconders inasmuch as processes under Sections 82-83 of the Code of Criminal Procedure, 1973 have already been issued against them and they have been declared proclaimed offender and in view of the judgment of the Supreme Court, in the cases of **Lavesh v. State (NCT of Delhi)**, reported in **(2012) 8 SCC 730** and **State of Madhya Pradesh v. Pradeep Sharma**, reported in **(2014) 2 SCC 171**, the anticipatory bail application, after issuance of processes under Sections 82-83 of the Code of Criminal Procedure, 1973, is not maintainable.

Learned Counsel for the petitioners, in reply, submits that the petitioners were not knowing about their involvement in the case and for the first time when the Investigating Officer filed a petition before the Court below for obtaining warrant of



arrest against the petitioners on 24.08.2018 and the police arrived in the house of the petitioners, then only the petitioners came to know about the institution of the present case.

After having heard learned Counsel for the parties and taking into consideration the facts that processes under Sections 82-83 of the Code of Criminal Procedure, 1973, have already been issued and in view of the judgment of the Supreme Court, mentioned above, this anticipatory bail application is not maintainable and is, accordingly, dismissed.

The petitioners, named above, are directed to surrender before the Court below within a period of fifteen days from today and seek regular bail, if so advised. If they do so, their application for regular bail shall be considered by the learned Court below on the same day on its own merit without being prejudiced by rejection of present application for grant of anticipatory bail.

The Court below shall also take into consideration the fact that the petitioners have no knowledge prior to 2018 about the present case pending against them.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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