

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25235 of 2019

Arising out of PS. Case No.-3 Year-2019 Thana- MAINATAND District- West Champaran

BULET SAH, aged about 28 years, male, Son of Shesh Sah @ Sheshnath Sah
R/O Ramnagari P.S.- Mainatand, District- West Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bimlesh Kumar Pandey, Advocate

For the Opposite Party/s : Mr. D.P.Tiwari, APP

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL ORDER

6 04-12-2019 Instant petition under Sections 439 and 440 of Criminal Procedure Code has been moved for grant of bail in F.I.R. No. 03 of 2019, dated 02.01.2019, registered at Police Station Mainatand under Section 376(d)/302 of the Indian Penal Code and Sections 4 and 6 of POCSO Act.

I have heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State. I have also perused the relevant record of the case, necessary for adjudication of this petition.

Having heard learned counsel for the petitioner, at this stage, this Court is not inclined to allow the application for bail filed under Sections 439 and 440 of the Code of Criminal Procedure.

According to the prosecution, the accused is involved



in a heinous crime, where after committing rape, prosecutrix, a minor, was murdered. The accused is in custody since 04.01.2019, whereas the incident took place on 1st of January, 2019. The accused was arrested on the basis of the statement of co-accused Munna Ansari, who disclosed complicity of the accused in the crime. Allegedly, both the accused persons forcibly took the prosecutrix to an isolated place, and after committing sexual assault, murdered her.

Learned counsel for the petitioner points out that some of the witnesses have not supported the case of the prosecution, inasmuch as one of the witnesses has stated during trial that accused Munna Ansari was seen alone at the place of occurrence and co-accused, that is the instant bail-applicant, Bulet Sah, was member of the search party.

Well, it is for the trial court to examine the effect of such a statement at the end of the trial, but even from such statement it cannot be inferred that co-accused, i.e. the instant applicant, had no role in the crime. At least from this, it can be inferred that the accused was present on the spot, though, it may be a ploy to be part of the search party. The crime is heinous in nature, and at this stage, involvement of the accused/petitioner in the crime cannot be said to be ruled out.



From the record it cannot be inferred that it is a case of false implication. The law mandates statutory presumption of commission of crime, unless proved to the contrary.

It is settled law that grant to bail is the discretion of the court but the discretion must be exercised not in opposition to, but in accordance with the well established principles of law.

The law laid down in Gudikanti Narasimhulu Versus Public Prosecutor, (1978) 1 SCC 240 by Justice Krishna Iyer explains the judicial discretion as- the unspoken but inescapable, silent command of our judicial system, and those who exercise it will remember that discretion when to a court of justice, means sound discretion guided by law. It must be governed by rule, not by humor, it must not be arbitrary, vague and fanciful, but legal and regular.

The Apex court in case titled- Vaman Narain Ghiya v. State of Rajasthan, (2009) 2 SCC 281 and State of U.P through CBI v. Amar Manik Tripathi, (2005) 8 SCC 21 decided It is well settled that the matter to be considered in an application for bail are....

(A) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence

(B) Nature and gravity of the charge-sheet



(C) Severity of the punishment in the event of conviction.

(D) danger of the accused absconding or fleeing if released on bail

(E) Character, behaviour, means, position and standing of the accused

(F) Likelihood of the offence being repeatedly reasonable apprehension of the witnesses being tampered with and

(G) danger, of course, of justice being thwarted by grant of bail.

Grant of bail though being a discretionary order- but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts however, do always vary from case to case. While placement of the accused in the society, though may be considered by that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances was ranting the grant of bail. The nature of the



offence is one of the basic consideration for the grant of bail – more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

In *Prasanta Kumar Sarkar Vs Ashish Chatterjee*, (2010) 14 SCC 496, the Hon'ble Supreme Court has summarized the basic principles laid down in catena of judgments on the point of granting bail. The Hon'ble Supreme Court proceeded to enumerate the following factors:

“... among other circumstances, the factors (which are) to be borne in mind while considering an application for bail are :

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;



(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger of course of justice being thwarted by grant of bail.”

In the case titled- State of Orissa v. Mahimananda Mishra JT, 2018 (9) SC 186 it was held that at the time of considering the bail application, the court must take into account certain factors such as the existence of prima facie case against the accused, gravity of the allegations, position and status of the accused, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of tampering of the witnesses and obstructing the court as well as the criminal antecedents of the accused. It is also well settled that the court must not go deep into merits of the matter while considering an application for bail. All that needs to be established from the record is the existence of the prima facie case against the accused.

In Vilas Pandurang Pawar Versus State of Maharashtra, (2012) 8 SCC 795 also it was held that while considering application for bail, scope for appreciation of evidence and other material on record is limited. Court is not expected to indulge in



critical analysis of evidence on record.

The present case has been registered under Sections 376(d) and 302 of the Indian Penal Code and Sections 4 and 6 of POCSO Act. Considering the gravity of the offence and finding that prime facie there are sufficient materials on record, I find no merits in the petition.

In view of the above discussion, I am not inclined to allow the petition by granting bail to the applicant/accused. The petition of the applicant/accused is hereby dismissed.

Any observation made herein shall not be construed to be an expression on the merits of the matter.

The petition stands disposed of.

(Sanjay Karol, CJ)

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