

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24043 of 2019

Arising Out of PS. Case No.-479 Year-2018 Thana- DHANARUA District- Patna

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DIWANA KUMAR @ DIWAN KUMAR @ DIWAN SINGH Son of Bijay
Singh Resident of Village - Khaira, P.S.-Gaurichak, District - Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Madan Mohan Prasad

For the Opposite Party/s : Mr.Dinesh Singh

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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. 479 of 2018 dated 28.12.2018 registered at Police Station Dhanarua District-Patna under Sections 363,365,366,366A and 120B of the Indian Penal Code.

Petitioner is in custody since 31.12.2018 in relation to an offence allegedly committed in the year 2018.

In a case where prosecutrix was a 14-years child allegedly subjected to sexual assault, there is no scope for compromise. The allegations are serious and as such this Court is not inclined to grant extension of provisional bail so granted on 26.08.2019, which order in toto is reproduced hereinbelow:



“Heard learned counsel for the petitioner, learned APP for the State and learned counsel for the informant.

Counsel for the petitioner is permitted to make necessary correction in the prayer portion of the main application in course of the day.

An affidavit has been filed on behalf of the petitioner. Same be kept on the record.

Following statement has been made in paragraph nos.3 and 4, which are as follows :

“3. that the petitioner pray that the matter may be sent to the Hon’ble High Court mediation center to search possibility of compromise in the case between both the parties.

4. That I also undertake to compromise the case in mediation center in view of the facts & circumstances the case and shall not have connection in any manner with the victim and parents of victim.”

Considering the aforesaid, the matter is referred to the Mediation Center, Patna High Court.

Let the petitioner, above named, be released on provisional bail on furnishing bail bonds of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned A.D.J. VII, Patna in connection with S.T. No.712 of 2019 arising out of Dhanaura P.S. case No.479 of 2018.

List this matter on 04.11.2019 after submission of mediation report.”

Learned counsel appearing on behalf of the victim and learned counsel for the State vehemently oppose the instant bail



application.

Having heard learned counsel for the parties and also perused the record so made available, this Court would consider the severity of the crime and the manner in which it could take place as also the statement of the prosecutrix recorded under Section 164 Cr.P.C., the Court is not inclined to grant privilege of bail. 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 Sarkav 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 363, 365, 366, 366A and 120B. Considering the gravity of the offence and finding that prima 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.

Petitioner is directed to forthwith surrender on or before 06.12.2019. However, in the event of non-compliance of the order passed by this Court, the authority will take the petitioner



into custody.

(Sanjay Karol, CJ)

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