

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1762 of 2019

Arising Out of PS. Case No.-7 Year-2019 Thana- MAIRWAN District- Siwan

1. Amit Kumar S/o Moti Chand Bhagat @ Moti Chandra Bhagat (Wrongly describe in FIR as Motichand Kushwaha) R/o Village- Sarna Mathia, P.S.- Darauli, District- Siwan
2. Mohit Kumar S/o Moti Chand Bhagat @ Moti Chandra Bhagat (Wrongly describe in FIR as Motichand Kushwaha) R/o village- Sarna Mathia, P.S.- Darauli, District- Siwan

... .. Appellants.

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. N. K. Agrawal, Sr. Advocate. Mr. Kundan Kumar Singh, Advocate.
For the Informant	:	Mr. Ajay Kumar Pandey, Advocate.
For the Respondent/s	:	Mr. Sadanand Paswan, Special P.P.

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL ORDER

7 27-08-2019 Heard learned counsel for the appellants, learned counsel for the informant and learned Special Public Prosecutor for the State.

This is an appeal under Section 14(A)(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter in short referred to as the 'SC/ST Act') against the refusal of prayer of anticipatory bail vide order dated 12.03.2019 passed by learned 1st Additional Sessions Judge cum Special Judge, Siwan in connection with Mairwa P.S. Case No.07 of 2019 registered under Section



302/34 of the Indian Penal Code and Section 3(2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

When the brother of the informant, namely, Nagendra Kumar Ram was proceeding to medicine shop to fetch medicine, appellants along with two other named and 2-3 unknown persons interacted with him on the way at the petrol pump. Thereafter, his brother proceeded further to fetch medicine at the clinic of Dr. Prince Kumar but his brother did not regress to house. Guddu Kharwar visiting his house thrice made search of his brother then the informant became sceptical and grilled the Guddu Kharwar about whereabouts of his brother but he did not disclose about his whereabouts. In course of search of his brother informant learnt that appellants and co-accused Guddu Kharwar and 2-3 unknown miscreants kidnapped his brother by his Bolero. Dead body of his brother was found on the following day at the bank of Siswan canal. His brother used to work as a driver of appellant Amit Kumar but he had left his service few days preceding to the occurrence finding his involvement in criminal activities and there was raid in the house of Amit Kumar and the Amit Kumar was having misgiving that the deceased was instrumental in the said raid.



It is submitted by learned counsel for the appellants that no such occurrence as alleged ever took place. Appellants have been falsely implicated in the case due to dirty village politics. There is no eye-witness of committing occurrence by the appellants or taking the deceased by them on their Bolero. Informant and witness have only stated about witnessing appellants and other persons interacting with the deceased on the way to the medicine shop but neither informant nor any witness has stated about ensuing of any altercation between the deceased and the appellants during interaction. Likewise, the informant and the witnesses have stated that the deceased might have been eliminated by the appellants as they were having misgiving that the deceased was instrumental in the raid conducted at their house. But there is no evidence in this regard in the case diary. Informant and witnesses have not disclosed the identity and genuineness of source of information of taking the deceased by the appellants and other accused persons. There is no cogent incriminating material on record indicating the complicity of the appellants in the occurrence, barring the confessional statement of Gudddu Kharwar, which has no evidentiary value in the eye of law. Hence, the appellants may be enlarged on bail.



Per contra, learned counsel for the informant and learned Spl. PP for the State vehemently opposing the prayer for bail submitted that the appellants have eliminated the deceased by kidnapping him along with their associates as the deceased had tipped off about criminal activities of the appellants and on the said tip off raid was conducted at the house of the appellants. It is further submitted that the deceased was seen initially interacting with the appellants during the course of proceeding to fetch medicine and, subsequently, it was learnt that they have kidnapped the deceased. It is also submitted that a process under Section 82 Cr.P.C. has already been issued against the appellants, hence anticipatory bail is not maintainable and the appellants do not deserve bail.

As per provision of Section 82 (4) Cr.P.C. where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under Section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect. Learned counsel for the



informant frankly conceded in course of argument that the appellants have not been declared proclaimed offender under Section 82 Cr.P.C. rather only a process under Section 82 has been issued against them. Merely issuing process under Section 82 Cr.P.C., is not a moratorium in granting anticipatory bail unless the accused is declared proclaimed offender under Section 82 Cr.P.C. Hon'ble Apex Court in the case of **Lavesh Vs. State (NCT of Delhi)** reported in **(2012) 8 Supreme Court Cases 730** has been pleased to rule that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Cr.P.C. he is not entitled to the relief of anticipatory bail.

In view of the facts and circumstances of the case, proposition of law and the case law, as the appellants have not been declared proclaimed offender, anticipatory bail of the appellants is maintainable.

Having regard to the facts and circumstances of the case and submissions of the parties, finding no cogent incriminating material against the appellants indicating their complicity in the occurrence, barring the confessional statement of co-accused Guddu Kharwar, which has no evidentiary value



in the eye of law, and no eye-witness of the occurrence, the above named appellants, in the event of their arrest or surrender before the learned Court below within a period of six weeks from today, be enlarged on bail on furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand) each with two sureties of the like amount each to the satisfaction of the learned 1st Additional Sessions Judge cum Special Judge, Siwan in connection with Mairwa P.S. Case No.07 of 2019, subject to the condition as laid down under Section 438 (2) of the Cr.P.C.

Accordingly, the impugned order is set aside and this appeal is allowed.

(Prakash Chandra Jaiswal, J)

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