IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.62721 of 2018

Arising Out of PS. Case No.-60 Year-2017 Thana- MAHILA P.S. District- Madhubani

==========

Md. Shahjad @ Md. Sehjad Son of Md. Mojibur Rahman, Resident of Village- Mohaddipur Sohrai, P.S.- Sakri, District- Madhubani.

... ... Petitioner/s

Versus

The State Of Bihar
Sangira Khatun, D/o- Md. Obaid, resident of village- Sugauna, P.S., Rahika, District- Madhubani

... ... Opposite Party/s

==========

Appearance :
For the Petitioner/s : Mr. Subhash Kumar Jha, Adv.
For the Opposite Party/s : Mr. Sri Rana Randhir Singh, APP

==========

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL ORDER

11 16-11-2019 Instant petition under section 438 of Criminal Procedure Code has been moved for grant of anticipatory bail in F.I.R. No.60 of 2017, dated 4.8.2018, registered at Mahila Police Station, Madhubani, under Sections 323, 341, 379, 498A and 307 of the Indian Penal Code and Section-3/4 of Dowry Prohibition 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.

It is contended on behalf of the opposite parties that

WEB COPY

the petitioner has not complied with the orders passed by the Family Court for payment of maintenance when petitioner through his learned counsel undertakes to comply with the same.

It is settled law that the grant of 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 similar observation was made by the Hon'ble Supreme court in another case of Jai Prakash Singh vs State of Bihar and another, reported in 2012 Cri. L.J. 2101.

The Courts owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and duly found

WEB COPY

guilty.

In the case of Sidharam Saltingappa Mhetre Vs. State of Maharastra, (2011) 1 SCC 694, the Hon'ble Supreme Court observed : "Personal liberty is very precious fundamental be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case". While relying upon its decision rendered by its Constitution Bench in Gurbaksh Singh Sibbia vs. State of Punjab, (1980) 2 SCC 565, laid down the following parameters for grant of bail:-

"111. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia's case (supra) that the High Court or the Court of Sessions to exercise their jurisdiction under section 438 Cr.P.C. by a wise and careful use of their discretion which by their long training and experience they are

WEB COPY

ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour."

Going through the provisions of Section 438 Cr.P.C., the four factors, which are relevant for considering the application for grant of anticipatory bail, are :

(i) the nature and gravity or seriousness of accusation as apprehended by the applicant;

(ii) the antecedents of the applicant including the fact as to whether he has, on conviction by a Court, previously undergone imprisonment for a term in respect of any cognizable offence;

(iii) the likely object of the accusation to humiliate or malign the reputation of the applicant by having him so arrested; and

(iv) the possibility of the appellant, if granted anticipatory bail, fleeing from justice.

In State of Maharashtra vs. Mohd. Sajid Hussain 2008 (1) SCC (Crl.) 176, the Hon'ble Supreme Court, while examining the principles governing grant of anticipatory bail, held that one of the four factors relevant for considering the application for grant of anticipatory bail is the possibility of the applicant, if granted anticipatory bail fleeing from justice.

WEB COPY

The Apex Court in Siddharam Satlingappa Mhetre (supra) laid down certain factors and parameters to be considered while considering application for anticipatory bail :

"122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

iii. The possibility of the applicant to flee from justice;

iv. The possibility of the accused's likelihood to repeat similar or the other offences.

v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of

WEB COPY

people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over - implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is

WEB COPY

entitled to an order of bail.

The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.

In Vilas Pandurang Pawar Versus State of Maharastra, (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.

Having heard learned counsel for the parties and considered the attending facts and circumstances of the case coupled with the undertaking given, the present petition is allowed.

The Petitioner, namely, Md. Shahjad @ Md. Sehjad, son of Md. Mojibur Rahman, resident of village- Mohaddipur Sohrai, P.S.- Sakri, District-Madhubani, in the event of arrest, be enlarged on bail subject to the following terms and conditions:

WEB COPY

(a) The petitioner shall furnish a bail bond of Rs. 25,000/-(Rupees Twenty five thousand) with one surety each of the like amount, to the satisfaction of the arresting authority.

(b) The petitioner is directed to join the investigation of the case as and when called for by the Investigating Officer in accordance with law.

(c) The petitioner shall not hamper the investigation in any manner whatsoever or shall influence any of the witnesses.

(d) The petitioner shall facilitate in the early completion of the investigation and otherwise fulfill all other statutory terms and conditions, so prescribed, in accordance with law.

(e) The petitioner shall not leave India without prior permission of trial Court.

(f) The petitioner may seek regular bail in accordance with law.

(g) Liberty reserved to the State to approach the Court seeking cancellation of anticipatory bail, if so required, subsequently.

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

WEB COPY

Petition stands disposed of in the above terms.

(Sanjay Karol, CJ)

K.C.Jha/-

U			

WEB COPY