

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52499 of 2019

Arising Out of PS. Case No.-35 Year-2019 Thana- HALSI District- Lakhisarai

1. Gautam Rajak, Son of Indradev Rajak
 2. Raghu Rajak Son of Tek Dhari Rajak
- Both are resident of Village- Rata, Police station- Halsi, District- Lakhisarai.
... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rabi Bhushan, Advocate
For the Opposite Party/s : Mr. Ashok Kumar, APP

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER

- 3 16-11-2019 Instant petition under section 438 of Criminal procedure code has been moved for grant of anticipatory bail in FIR No. 35 of 2019, dated 26.02.2019, registered at Police Station Halsi under sections 323/366 A read with Section 34 of the Indian Penal Code and Section 8 of the POCSO Act.

I have heard learned counsel for the petitioners and learned Additional Advocate General for the State. I have also gone through the relevant record of the case, necessary for adjudication of this petition.

Brief facts of the case is that in relation to an offence under Sections 323/366(A) read with Section 34 of the Indian Penal Code and Section 8 of the Protection of Children from Sexual Offences (POCSO) Act, FIR No.35 of 2019 dated 26.02.2019 was registered at Police Station Halsi, District



Lakhisarai.

It is true that initially, name of the present petitioners, i.e. Gautam Rajak and Raghu Rajak, was not mentioned in the FIR, but subsequent investigation did reveal their complicity in the crime, resulting into the filing of the charge-sheet against the said accused persons. It is true that investigation of other accused is pending, but insofar as the present petitioners are concerned, their complicity cannot be said to be missing in any manner. Prima facie case is made out against them.

The crime is of serious nature. Allegedly, a minor as defined under the Protection of Children from Sexual Offences (POCSO) Act was induced to leave her place with an intent to seduce her to illicit intercourse with another person. The punishment prescribed for such an offence is up to 10 years and fine. Whether the statement of the prosecutrix recorded under Section 164 of the Code of Criminal Procedure is contrary to the prosecution case and as to whether the prosecutrix refused to get herself medically examined or not are all issues of trial. But prima facie, it cannot be said that the accused were not involved in the crime so as to warrant this Court to allow the application seeking pre-arrest bail.

Prosecutrix (identity/name concealed) is a minor. Taking



mutually self contradictory pleas, on the one hand, it is argued that petitioners have got nothing to do with the crime, whereas on the other hand, in the petition, it is averred that one Sanoj Rajak was having an amorous relationship with the prosecutrix.

Learned APP seriously opposes the instant petition for grant of pre-arrest bail.

It is settled law that the 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 (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** held 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 basis 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 enumerated 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 tempering 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 into 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.

Honble Apex court in Cr. Appeal No. 1340 of 2019, titled **Shri P. Chidambaram Versus Directorate of Enforcement, decided on 05.09.2019**, relevant paragraphs whereof are reproduced hereinafter:-

"67. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.

72. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper



the investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In State Rep. By the CBI versus Anil Sharma (1997) 7 SCC 187, the Supreme Court held as under:-

"6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful information's and also materials which would have been concealed.

Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."

In [Jai Prakash Singh v. State of Bihar and another](#) (2012)

4 SCC 379, the Supreme Court held as under:-

"19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty.



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 323/366 A read with Section 34 of the Indian Penal Code and Section 8 of the POCSO Act. Considering the gravity of the offence and finding that the 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 anticipatory bail to the applicants/accused. The petition of the applicants/accused is hereby dismissed.

The petition stands disposed of.

(Sanjay Karol, CJ)

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