

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.54336 of 2019**

Arising Out of PS. Case No.-334 Year-2018 Thana- MUNGER MUFFASIL District- Munger

Md. Niyajul Rahman @ Md. Niyajur Rahman @ Gulo Son of Late Md. Rasid  
@ Late Abdul Rasid Resident of Village-Mirzapur, Bardah, P.S.-Muffasil,  
District-Munger.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr.Kamal Kishore Jha

For the Opposite Party/s : Mr.Dr. Ajeet Kumar

**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**ORAL ORDER**

3      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. 334 of 2018 dated 14.09.2018 registered at Police Station Muffasil District-Munger under Sections 120B/34, 121,379 and 414 of the Indian Penal Code and 25(1-a), 25(1-aa), 25(1-b)a, 26 and 35 of the Arms Act and 39 of the Unlawful Activities (Prevention) 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.

Petitioner is behind bars since 08.01.2019.

The concerned learned Sessions Court has already accorded sanction for prosecution of the petitioner under the provisions of the Arms Act.

The petitioner, amongst others, is involved in illegal sale and purchase of firearms. All this surfaced when two firearms (AK-47) were recovered from the custody of co-accused, who named the petitioner to be part of the group supplying firearms to the MAOIST and other hardened criminals. The offence is serious and investigation is in progress. Also thus far record reveals that other members of the group are involved in selling the firearms and ammunition from the ordinance depot at Jabalpur. Prima facie, at this stage, it cannot be said that petitioner is innocent and stands falsely implicated in the crime.

As such, this Court is not inclined to grant the privilege of bail merely because similarly situated accused persons stand enlarged on bail. That fact itself cannot be a reason, sufficient and enough to grant bail to the present petitioner. The concept of parity alone is alien to the power of grant of bail. Case has to



be seen in the attending facts and circumstances. The role ascribed to the petitioner, prima facie, cannot be said to be incorrect or false. 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.

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 120B/34, 121,379 and 414 of the Indian Penal Code and 25(1-a), 25(1-aa), 25(1-b)a, 26 and 35 of the Arms Act and 39 of the Unlawful Activities (Prevention) 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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