

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58786 of 2019

Arising Out of PS. Case No.-521 Year-2018 Thana- KAHALGAON District- Bhagalpur

1. Afroj Khan @ Md. Afroj Khan
 2. Jalal Khan
 3. Siraj Khan @ Md. Seraj Khan
 4. Aurangzeb Khan @ Md. Aurangzeb Khan
 5. Mumtaj Khan @ Md. Mumtaj
- All are Sons of Zabbar Khan, Resident of Village-Chhoti Karikado, P.S.- Shivnarayanpur, District-Bhagalpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Jha, Advocate
For the Opposite Party/s : Mr. Nand Kishore Prasad, APP

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER

3 16-11-2019 1. Instant petition under section 438 of Criminal procedure code has been moved for grant of anticipatory bail in FIR No. 521 of 2018, dated 15.08.2018, registered at Police Station Kahalgaon (Shivnarayanpur), District- Bhagalpur under sections 302 and 120B of the Indian Penal Code as well as Section 27 of the Arms Act.

2. Having heard learned counsel for the parties as also perused the record, this Court does not find favour in allowing the instant application for grant of pre-arrest bail only for the reason that co-accused stands granted bail by a co-ordinate Bench of this Court in Criminal Miscellaneous No.76882 of



2018 vide order dated 21.12.2018 which order is reproduced in
toto:

“21.12.2018

Learned counsel for the petitioner is permitted to make necessary correction in paragraph no. 10 of the bail application, in course of the day.

Heard learned counsel for the petitioner and learned A.P.P. for the State.

The petitioner is apprehending his arrest in a case for the offence registered under Sections 302, 120(B) of the IPC and 27 of the Arms Act.

The prosecution story, in brief, is that on 15.08.2018 the father of the informant Sahid Khan was lying dead below the cot at his BASA. He also found gun shot injury in the mouth of his father. He claimed that the petitioner and other accused persons entered into conspiracy and killed his father. It is also alleged that in the year 2013, the deceased Sahid Khan had purchased 75 decimals land from this petitioner on the basis of Mahdanama and Panchnama for consideration of Rs.1,50,000/-. Petitioner further sold away the aforesaid land in favour of co-accused Md. Afroz Khan. After registration of sale deed in favour of Md. Afroz Khan, he and other accused persons threatened the deceased with dire consequences about 15-20 days ago from this incident.

It has been submitted by learned counsel for the petitioner that the petitioner has falsely been implicated in the present case. There is no allegation of tampering with the witnesses alleged against the petitioner.



There is no eye witness to the alleged occurrence and merely on the basis of suspicion, the petitioner is being made accused in the present case. Except for suspicion, there is no substantive evidence to suggest the implication of the petitioner in the present case nor there is any circumstantial evidence to suggest the implication of the petitioner in the present case.

On behalf of the learned counsel for the State, it has been submitted that the petitioner is named in the F.I.R.

Considering the aforesaid facts and circumstances, let the petitioner above named, in the event of arrest or surrender before the learned court below within a period of six weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs.10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned C.J.M. Bhagalpur or successor court, in connection with Kahalgaon (Shivnarayanpur) P.S. Case No. 521 of 2018, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.”

3. Simply because there is no eye witness to the occurrence to the incident cannot be a ground to grant bail, more so when complicity of the instant accused is clearly reflective from the record of the case. It is come on record that at some point in time, prior to the occurrence to the incident, the present accused along with others had threatened and intimated the deceased, merely in relation to a land dispute. At that point in



time, gun shots were fired. The instant FIR stands registered on the basis of the complaint lodged by one Shri Raj Khan, son of the deceased and the complaint does scribe role of the instant accused, namely Afroj Khan @ Md. Afroj Khan, Jalal Khan, Siraj Khan @ Md. Seraj Khan, Aurangzeb Khan @ Md. Aurangzeb Khan and Mumtaz Khan @ Md. Mumtaj, in the crime.

4. 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.

5. 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.

6. 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**



hled 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.

7. 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.

8. In **Prasanta Kumar Sarkar 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."*



9. 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.

10. 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; pos-



sibility 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."

11. 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.

12. 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 materials on record is limited. Court is not expected to indulge in critical analysis of evidence on record.

13. The present case has been registered under section 302 and 120 B of the Indian Penal Code as well as Section 27 of the Arms 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.

14. In view of the above discussion, I am not



inclined to allow the petition by granting anticipatory bail to the petitioners. The petition of the petitioners is hereby dismissed.

15. The petition stands disposed of.

(Sanjay Karol, CJ)

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