

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.60570 of 2019

Arising out of PS. Case No.-290 Year-2017 Thana- UDWANTNAGAR District- Bhojpur

ABHISHEK KUMAR, Son of Anil Kumar @ Anil Singh, Resident of
Village- Lodipur, P.S.- Chandi, District- Bhojpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Prabhat Kumar Singh, Advocate
For the Opposite Party/s : Mr. S.D. Yadav, APP

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER

3 11-12-2019 Instant petition under Sections 439 and 440 of Criminal Procedure Code has been moved for grant of bail in F.I.R. No. 290 of 2017, dated 21.09.2017, registered at Police Station Udwanthnagar under Section 302/34 of the Indian Penal Code and Sections 27 of the Arms 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.

Petitioner seeks parity in grant of bail on the strength of orders dated 31.08.2018 and 02.07.2019 passed by a coordinate Bench of this Court in Cr. Misc. No. 51054 of 2018 and Cr. Misc. No. 39201 of 2019, titled as Pawan Chaudhary Vs. The State of Bihar and Ranjeet Choudhary Vs. The State of



Bihar respectively.

In relation to F.I.R. No. 290 of 2017, dated 21.09.2017, registered at Police Station Udwanthnagar under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act, the instant accused, namely, Abhishek Kumar along with other co-accused Pawan Chaudhary and Ranjeet Choudhary, amongst others, was arrested on 1st of September, 2018.

In the case of Pawan Chaudhary, the order passed by a co-ordinate Bench of this Court in Cr. Misc. No. 51054 of 2018, titled as Pawan Chaudhary Vs. The State of Bihar, is reproduced hereunder in toto:-

“Heard learned counsel for the petitioner and learned APP for the State.

Petitioner seeks bail in a case registered for the offences punishable under Sections 302/34 of the Indian Penal Code and 27 of the Arms Act.

The FIR of the occurrence of murder is against unknown. The impugned order would reveal that none of the witnesses stated before the police that the petitioner was seen alongwith the deceased at any point of time. The Supervising Authority in his report has submitted that the petitioner and others were involved in the occurrence of murder.

Since there is no direct evidence against the petitioner, let the petitioner, above named, be released



on bail on furnishing bail bond of Rs. 20,000/- (Twenty Thousand) with two sureties of the like amount each to the satisfaction of learned Court below where the case is pending in connection with Udwanthnagar Police Station Case No. 290 of 2017, subject to the condition that both bailors shall be resident of territorial jurisdiction of the learned court below and further the petitioner shall fully cooperate with the investigation/trial of the case, failing which the court below shall be at liberty to cancel the bail bond of the petitioner.”

In the case of Ranjeet Choudhary, the order passed by a co-ordinate Bench of this Court in Cr. Misc. No. 39201 of 2019, titled as Ranjeet Choudhary Vs. The State of Bihar, is reproduced hereunder in toto:-

“Heard learned counsel for the petitioner and learned APP for the State.

The petitioner seeks bail in a case instituted for the offences under Sections 302/34 of the Indian Penal Code and 27 of the Arms Act.

The prosecution allegation in short is that the accused persons committed murder of the son of the informant while he went outside for some work.

It has been submitted on behalf of the petitioner that the petitioner is in custody since 8.8.2018 and has got no criminal antecedent. There is no allegation of tampering of witnesses alleged



against the petitioner. Charge-sheet has been submitted in the present case. The petitioner is not named in the F.I.R. The name of the petitioner has transpired merely on the basis of suspicion. Except for suspicion, there is no other substantive evidence to suggest his implication in the present case. There is no eye witness to the alleged occurrence. Other co-accused has been granted bail vide Annexure-2 to the present application.

On behalf of the State, it is submitted that the petitioner is not named in the F.I.R.

Considering the aforesaid facts and circumstances, it is directed that the petitioner, above named, be released on bail on furnishing bail bonds of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Bhojpur at Ara in connection with Udwant Nagar P.S. Case No. 290 of 2017.”

There cannot be any concept of parity in bail, for each case has to be considered and examined in the attending facts and circumstances, more so, the role played by each one of the accused, so ascribed in the F.I.R.

The crime is heinous. According to the prosecution, on 21st of September, 2017, a complaint was lodged at Police Station Udwantnagar that certain unknown persons had killed



her son. A written report was prepared and the matter was investigated. Investigation revealed the involvement of the accused persons.

According to learned Additional Public Prosecutor, all the assailants including the accused petitioner have played a vital role in the death of the deceased. The deceased was found murdered and empty cartridges were recovered from the spot of crime.

It is seen that the case is still under investigation and against the instant accused, 17 other cases of heinous nature stands registered at different Police Station, details whereof is as under:-

“I. Naubatpur P.S. Case No. 576 of 2015, registered under Section 302/34 I.P.C. and 27 Arms Act.

II. Naubatpur P.S. Case No. 687 of 2015 registered u/s 302/34 I.P.C. and 27 Arms Act.

III. Naubatpur P.S. Case No. 300/16 u/s 384, 34 I.P.C. & 27 Arms Act.

IV. Udwanthnagar P.S. Case No. 196 of 2017 u/s 302/34 I.P.C. and 27 of the Arms Act.

V. Udwanthnagar P.S. Case No. 190 of 17 u/s 302/34 I.P.C. and 27 of the Arms Act.



VI. Chandi P.S. Case No. 115/17 u/s 302/34 I.P.C. and 27 of the Arms Act.

VII. Udwantnagar P.S. Case No. 340/2017 u/s 386, 307 I.P.C. and 27 Arms Act.

VIII. Ara Nawadah P.S. Case No. 16 of 2018 u/s 398 of the Indian Penal Code.

IX. Chandi P.S. Case No. 23 of 2018 u/s 302/34 I.P.C. and 27 Arms Act.

X. Ara Nawadah P.S. Case No. 214 of 2018 u/s 385/387 of the I.P.C.

XI. Ara Nawadah P.S. Case No. 221/18 u/s 385/387 I.P.C.

XII. Naubatpur P.S. Case No. 235 of 2018 u/s 399/402/307/353 I.P.C. and 25(1-b)A of the Arms Act.

XIII. Ara Nawadah P.S. Case No. 237 of 2018 u/s 385/387 of the Indian Penal Code.

XIV. Chandi P.S. Case No. 59 of 2018 under Section 385/387 of the Indian Penal Code.

XV. Bihita P.S. Case No. 388 of 2017 under Section 386 of the Indian Penal Code.

XVI. Bihita P.S. Case No. 149 of 2018 under Section 385/387 of the Indian Penal Code.



XVII. Bihita P.S. Case No. 160 of 2018 under Section 385/387 of the Indian Penal Code.”

As such, considering the gravity of the offence and the material placed on record, it cannot be said that the accused has made out a case for grant of bail. It is a settled principle of law that bail and not jail is the principle to be adopted in a case of grant of bail, but then what is also required to be seen is the nature of the offence, the role ascribed to the accused as also the antecedents and the previous crime.

Having heard learned counsel for the petitioner, this Court is not inclined to allow the application for bail filed under Sections 439 and 440 of the Code of Criminal Procedure.

From the record it cannot be inferred that it is a case of false implication. The law mandates statutory presumption of commission of crime, unless proved to the contrary.

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 Section 302/34 of the Indian Penal Code and Sections 27 of the Arms 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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