

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74706 of 2019

Arising Out of PS. Case No.-237 Year-2018 Thana- NOKHA District- Rohtas

GAUTAM KUMAR @ GUPTA Son of Ram Krishna Singh Resident of
Village - Lewara, P.S.- Nokha, District - Rohtas at Sasaram.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Raghunandan Kumar Singh
For the Opposite Party/s : Mrs.Rina Sinha

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER

3 18-12-2019 Instant petition under Sections 439 and 440 of

Criminal Procedure Code has been moved for grant of bail in

F.I.R. No. 237 of 2018 dated 30.08.2018, registered at Police

Station Nokha under Sections 302/34 of the Indian Penal Code

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 seeks bail on the strength of order granting
bail by a co-ordinate Bench of this Court in favour of co-



accused. The said order passed in Cr.Misc. No. 38561 of 2019, titled as Ajay Chaudhary vs. The State of Bihar, in toto is reproduced as under:

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

The petitioner seeks bail in Nokha P.S.Case No. 237 of 2018 instituted for the offence under Section(s) 302/34 of the Indian Penal Code.

Learned counsel for the petitioner submits that allegation against this petitioner in the written report is that the deceased had last gone with this petitioner and he did not return. There is no eye witness to the case.

It is mentioned in the written report that dead body has been recovered from house of Rajesh Chaudhary.

Petitioner is in custody since 5.9.2018.

Considering the aforesaid, let the petitioner, above named, be released on bail on furnishing bail bond of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of the ACJM, Sasaram, in connection with Nokha P.S.Case No. 237 of 2018 subject to the condition that both the bailors shall be the close relative of the petitioner.”

In bail, there cannot be any concept of parity. The case of each of the accused has to be considered on the basis of attending facts and circumstances and more so the role ascribed



in the crime.

In the instant case, no doubt, dead body was recovered from the *varandah* of the house of the accused Rajesh Choudhary, who already stands enlarged on bail. But that would not mean that petitioner's role false and insignificance. In fact, as the learned A.P.P. rightly invites attention of this Court, investigation has revealed direct involvement of the accused in the crime. It was he who assaulted the deceased and that too without any provocation. The crime took place in the village.

Learned counsel for the petitioner submits that investigation has not revealed any complicity of the accused in the crime. Well, this Court does not find favour.

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. 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 Sections 302/34 of the Indian Penal Code. Considering the gravity of the offence and finding that prima 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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