

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.79580 of 2019

Arising Out of PS. Case No.-486 Year-2017 Thana- RAJAON District- Banka

ANIL SAH Son of Suren Sah Resident of Village - Mohana, P.S.- Rajoun,
Distt.- Banka.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ajay Kumar Jain, Adv.

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

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL ORDER

4 18-12-2019 Instant petition under section 438 of Criminal Procedure Code has been moved for grant of anticipatory bail in Rajoun P.S. Case No. 486 of 2017 dated 24.9.2017 registered under Sections 302, 328/34 of the Indian Penal Code, pending in the court of learned C.J.M., Banka.

I have heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.

Learned counsel for the petitioner, in support of his case, has made the following submissions:

(a) It is a case of false implication; (b) The viscera report does not reveal any signs of poisoning in the body of the deceased; (c) petitioner has been falsely implicated on account of animosity between the complainant and him; and (d) petitioner, who is the informant, is innocent.



Having heard learned counsel for the petitioner, this Court is not inclined to grant pre-arrest bail, more so in view of the attending facts and circumstances of the case. No doubt, the co-accused stands enlarged on bail by this Court vide order dated 3rd of September, 2019 passed in Cr. Misc. No.6386 of 2019 (Sunita Devi Vs. The State of Bihar), but then there cannot be any concept of parity in bail. Each case has to be examined in the attending facts and circumstances of the case. In the instant case, it is the allegation against the petitioner that both he and the co-accused Sunita Devi administered poison to a child, aged three years, born out of the wedlock of the instant petitioner and complainant Rani Devi.

It is seen that the petitioner did apply for pre-arrest bail on 4.4.2018 which stood rejected by the learned Sessions Court since when the accused has been evading the process of law and sitting on the fence speculating with regard to the grant of bail. It is only after this Court granted pre-arrest bail in favour of Sunita Devi that the accused filed the instant petition. There is no explanation as to what was the accused doing for more than two years? why did he not come forward and assist the prosecution in completing the investigation? why is it that the accused has now filed the instant application only after the



passing of the order by this Court in the case of the co-accused?

It has come on record that the accused, undisputedly, has solemnized two marriages, but, for whatever reason, abandoned his first wife and started residing with the second wife, namely Sunita Devi. The allegation against the accused is serious. Death of a child, be it for whatever reason, took place. The investigation is still ongoing and, as such, at this point in time it would not be prudent to pass an order in favour of the accused.

As such, the present application stands dismissed.

(Sanjay Karol, CJ)

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