

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.84384 of 2019

Arising out of PS. Case No.-265 Year-2019 Thana- RAJNAGAR District- Madhubani

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ARUN YADAV @ ARUN KUMAR YADAV S/o Rajdeo Yadav @ Kuje
Yadav R/o Villagwe- Bhariya, Bishanpur, P.S.- Rajnagar, District-
Madhubani.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Ratanakar Jha, Advocate

For the Opposite Party/s : Mr.Ramesh Chandra, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER

2 19-12-2019 Instant petition under Sections 439 and 440 of

Criminal Procedure Code has been moved for grant of bail in
F.I.R. No. 265 of 2019, dated 25.09.2019, registered at Police
Station Rajnagar, G.R. No. 1825 of 2019 under Sections 272,
273/34 and 30(a) of the Bihar Prohibition and Excise Act, 2016.

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.

Learned counsel for the petitioner prays for bail
relying upon the order dated 02.12.2019 passed by a co-ordinate
Bench of this Court in Cr. Misc. No. 76757 of 2019, titled as
Pappu Yadav Vs. The State of Bihar.



Learned counsel seeks bail by invoking the doctrine of parity.

In a case of bail, there cannot be any parity, for each case has to be considered in the attending facts and circumstances, more so the role ascribed against the accused as also the triple test, which stands laid down by the Apex Court in its judicial pronouncements.

The order relied upon, in toto, reads as under:-

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

The petitioner is apprehending his arrest in a case registered for the offences punishable under Sections 272, 273/34 of the IPC 30(a) of Bihar Prohibition and Excise Act, 2016.

Liquor was recovered from a four wheeler and allegation is that driver Arun Yadav and this petitioner fled away from that car.

Submission is that petitioner has got no criminal antecedent nor he has any concern with the said car or the liquor.

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 Rajnagar P.S. Case No. 265/2019, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure 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.”

Having heard learned counsel for the petitioner as also the learned Additional Public Prosecutor, who vehemently opposes the bail application, this Court is not inclined to grant the privilege of bail. Ex facie, it cannot be said that the case of the prosecution is concocted or that petitioner stands falsely implicated.

It is the case of the prosecution that the petitioner is regularly engaged in nefarious activities and that he has got past antecedents with regard thereto. Also, it is seen that the petitioner fled away from the spot. He was driving a four wheeler from which the contraband substance i.e. 36 litres of country made liquor packed in 35 cartons; 5 cartons; 40 cartons of bottles of different size were recovered.

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.

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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