

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.1095 of 2020**

Arising Out of PS. Case No.-171 Year-2019 Thana- DANIYAWAN District- Patna

Putur Paswan, Son of Late Lakhan Paswan, Resident of Village-Erai Mustafapur, P.S.-Daniyawana, District-Patna at present resident of Village-Vinsha, P.S.-Karya Parsuraya, District-Nalanda.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Rudra Deo, Advocate
For the Opposite Party/s : Mr.Ram Naresh Ray, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

8 29-09-2020 Heard learned counsel for the petitioner and Mr.
Ram Naresh Ray, learned A.P.P. for the State.

Petitioner in the present case is seeking pre-arrest bail in connection with Daniyawana P.S. Case No. 171 of 2019 registered for the offences punishable under Sections 147, 148, 149, 323, 324, 302 of the Indian Penal Code.

The prosecution case has been registered on the basis of the fardbeyan of injured Mili Kumari lying at Nalanda Medical College and Hospital Emergency Ward on 24.10.2019. She has alleged that on the same day at about 5.30 P.M. her mother and elder sister had gone to the market and as they were returning home in village Erai Mustafapur in front of the house of Ankit Kumar altogether ten named accused persons who had



already assembled with a pre-plan started assaulting the mother and sister of the informant, they were lashed with lathi, Katha (कत्ता) and rod. On hulla when the informant reached there she found that all the named accused persons had brutally assaulted her mother and sister and had injured both of them. Then it is alleged that this petitioner having Katha in his hand and co-accused Brind Paswan lashed with iron rod assaulted the informant also which caused fracture of her right hand, in the said assault her sister Mahima Mishtri suffered head injury and fracture of left hand, her mother suffered brutal injury on her body as also fracture of her right leg and she became unconscious. The accused persons thereafter fled away. All the injured were brought to the N.M.C.H. where the mother of the informant declared dead, the informant and her sister were getting treatment in the hospital. Previous enmity has been shown reason for the assault.

In this case, diary was called for and while sending reminder to the learned court below to send the case diary when learned counsel for the petitioner placed before this Court the order of anticipatory bail granted to the co-accused Brind Paswan by learned 1st Additional Sessions Judge, Patna City, Patna and submitted that case of the petitioner is identically



situated, this Court passed an interim order directing that the petitioner shall not be arrested till further order provided he appears and cooperates in course of investigation by presenting himself before the Investigating Officer within one week.

Thereafter, the case diary was received but after passing another order which was sent to the learned Sessions Judge, Patna calling upon him to submit a report as to why despite orders of this Court case diary has not been sent. When the case diary was received finding that in paragraph '75' of the case diary the criminal history of the accused has been recorded which shows at least 20 cases pending, this Court called for a clarity by way of a report from the office of Superintendent of Police, Rural, Patna who has submitted his report which is kept at flag 'L'. In the antecedent report, however, it is clarified that the cases recorded in paragraph '75' of the case diary are not against the petitioner.

When the matter was taken up on 04.09.2020 and a detail hearing took place and learned counsel for the petitioner submitted that the identically situated co-accused Brind Paswan has been granted anticipatory bail by 1st Additional Sessions Judge, Patna City in ABP No. 9658 of 2019, this Court was also apprised that in the case of Brind Paswan learned 1st Additional



Sessions Judge, Patna City took a view that he is entitled for grant of anticipatory bail whereas in the case of this petitioner the same Presiding Officer has taken a view that the allegations are serious in nature, both the orders have been passed in few days interval only, this Court requested the learned District and Sessions Judge, Patna to call for entire records of all cases in connection with Daniyawar P.S. Case No. 171 of 2019 and after examining the records, the nature of the allegations and observation on the orders and the consistency of those orders of the learned 1st Additional Sessions Judge, Patna City be sent to this Court in a sealed envelop. At the same time, this Court noticed that in the case diary the complete post-mortem report and injury reports of the informant and her sister had not been sent to this Court and thereafter the Superintendent of Police, Patna was requested to send the complete post-mortem report and injury report of the informant and her sister.

The learned District and Sessions Judge, Patna has submitted his report bearing no. 37 dated 10th September, 2020 in which after going through the records he has concluded in the following words:

“I am further to say that I have gone through the entire aforesaid records as well as FIR of Daniyawar P.S. Case No. 171/2019. According to the Prosecution Case, the role of FIR named



accused persons along with 4-5 unknown persons has been assigned for causing hurt to the informant, informant's sister and informant's mother with Lathi, Kata & rod, due to which informant, informant's sister and informant's mother sustained injury. There is general and omnibus allegation against all accused persons but there is specific allegation against accused persons namely Putur Paswan and Brind Paswan for causing injury to informant, informant's sister and informant's mother.

As such, I observe that the order passed by the Addl. Sessions Judge-1st, Patna City vide order dated 23.12.2019 & 11.12.2019 in connection with ABP No. 9658/2019 and 9437/2019 related to accused persons **Brind Paswan and Putur Paswan** are **Inconsistent** in nature.

However, inconvenience caused the Hon'ble Court is deeply regretted.

I, therefore, request you to place it before Hon'ble Court for kind perusal and needful."

Now the complete post-mortem report as well as the injury reports have been received. The difficulty which this Court had to bear with in getting the injury report from NMCH may be found from the order dated 18.09.2020. It seems that only after the said order was passed the attention of the Superintendent of NMCH could be drawn and the injury reports have been prepared.

The injury report of the informant and her sister



shows multiple injury on their vital part of the body suggesting that they had been brutally assaulted and all the injuries have been caused by hard blunt object. The informant has herself suffered multiple injuries on her body and the nature of injury has been noted as 'grievous'. The post-mortem report shows that the mother of the informant was also brutally assaulted and on her body several ante mortem injuries have been seen on the vital parts of the body.

Learned counsel for the petitioner has submitted before this Court that so far as this petitioner is concerned, he is said to have a Katha in his hand which is in the nature of a small country made pistol but there is no firearm injury on the body of the deceased or the injured. His another submission is that in any view of the matter the case of the petitioner is identically situated with Brind Paswan co-accused who has been granted privilege of anticipatory bail, therefore, the petitioner also deserves privilege of anticipatory bail.

Mr. Ram Naresh Ray, learned A.P.P. representing the State has drawn the attention of this Court towards the allegations made in the First Information Report and submits that the informant has specifically alleged that this petitioner was having a Katha (कत्ता) which is a kind of instrument made of



iron and is used for cutting the straw for purpose of consumption by animals. Even otherwise if Katha according to the petitioner is a small size country made pistol, the same is built of iron and if some body is assaulted by that iron part of the Katha the injuries will be caused from the blunt part of the iron.

Learned A.P.P. has submitted that so far as the present case is concerned, there are specific allegations against this petitioner and co-accused Brind Paswan was lashed with the iron rod and that is a hard and blunt object which he was carrying. The post-mortem report as well as the two injury reports go a long way to show that the deceased had not only suffered ante mortem injuries caused by hard and blunt object but had also suffered incised looking wounds and stab wounds, she had suffered lacerated wounds and multiple abrasion, similarly the injured had suffered multiple injuries caused by hard blunt object and in such circumstance the co-accused who was having in his hand hard blunt object and has been granted privilege of anticipatory bail by learned 1st Additional Sessions Judge, Patna City, Patna, the very order granting privilege of anticipatory bail to the co-accused needs to be looked into by this Court and in the interest of justice and according to him the



order granting privilege of anticipatory bail is a kind of wrong order suffering from perversity and once it has come to the notice of this Court, this Court need to exercise its power suo motu to test the veracity of the said order and for that purpose a suo motu revision may be registered but the said order be not allowed to be taken benefit of by this petitioner. He has also relied upon the judgment of the Hon'ble Supreme Court in the case of **Puran and others versus Rambilas and others** reported in **AIR 2001 SC 2023**. Wherein the Hon'ble Supreme Court has discussed the law on setting aside the unjustified, illegal or perverse order.

Learned A.P.P. for the State has also submitted that so far as privilege of anticipatory bail is concerned, the guiding factors for grant of anticipatory bail have been repeatedly pointed out by the Hon'ble Supreme Court and one of the guiding factors would be that the nature and gravity of the accusation as also the exact role of the accused must be properly comprehended and impact of grant of anticipatory bail in the cases of this magnitude affecting the victims be also looked into. It is his submission that not only the prayer of anticipatory bail of the petitioner is fit to be rejected but the suo motu revision be also registered to examine the order passed by learned 1st



Additional Sessions Judge, Patna City, Patna in the case of
Brind Paswan.

Having regard to the facts and circumstances of the case and taking note of the submission and the materials recorded hereinabove as this Court has noticed that there are specific allegations against this petitioner and the informant, her mother and sister were allegedly brutally assaulted causing multiple injuries to them and the mother of the informant has also succumbed to the injury, the gravity of the offence alleged and the materials are such that this Court is not inclined to grant anticipatory bail to the petitioner. The prayer is, thus, refused. Interim order stands vacated.

Let the petitioner surrender in the court below and pray for regular bail within two weeks from today which shall be disposed of on its own merit.

So far as the order passed in Brind Paswan co-accused in ABP No. 9658 of 2019 is concerned, this Court is prima-facie satisfied from the materials on the record which have been discussed hereinabove, that the nature of specific allegation against the co-accused Brind Paswan, the kind of weapon in his hand, ante mortem injuries on the body of the deceased suggesting several injuries caused by hard and blunt object and



the specific allegation of the informant that she was also assaulted by him and the informant had suffered grievous injury, the order granting him anticipatory bail needs to be examined.

This Court has gone through the judgment of the Hon'ble Apex Court in the case of **Puran and others** (supra) and is satisfied that this case is a fit case in which this Court should exercise suo motu power of revision.

Accordingly, this Court directs that a suo motu revision be registered in the matter of grant of anticipatory bail to co-accused Brind Paswan, Son of late Moti Paswan, resident of village-Erai Mustafapur, P.S.-Daniyawan, District-Patna and a show cause be issued to him calling upon him to show as to why the anticipatory bail granted to him by learned 1st Additional Sessions Judge, Patna City, Patna in ABP No. 9658 of 2019 vide order dated 23.12.2019 be not set aside.

For purpose of maintaining a date let the suo-moto revision application be listed after service of notice on 19.10.2020 before an appropriate Bench after seeking permission of Hon'ble the Chief Justice.

The Court will consider after final adjudication of the revision application as to whether any action is required in the Administrative side in the kind of order passed by the then



learned Additional Sessions Judge-1st, Patna City in the case of
co-accused. If such a view is ultimately taken the same shall be
referred to Hon'ble the Chief Justice for further consideration.

Let this matter be treated as disposed of.

(Rajeev Ranjan Prasad, J)

vats/-

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

