

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8200 of 2020

Arising Out of PS. Case No.-47 Year-2010 Thana- THAKRAHA District- West Champaran

1. HARI KISHUN YADAV Son of Murat Yadav Resident of Village-Harpur Mujauna, Police Station-Yogapatti, District-West Champaran.
2. Prabhu Yadav Son of Mahanth Yadav Resident of Village-Harpur Mujauna, Police Station-Yogapatti, District-West Champaran.
3. Harendra Yadav Son of Harikishun Yadav Resident of Village-Harpur Mujauna, Police Station-Yogapatti, District-West Champaran.
4. Heeralal Yadav Son of Mahanth Yadav Resident of Village-Harpur Mujauna, Police Station-Yogapatti, District-West Champaran.
5. Madan Yadav Son of Gargan Yadav Resident of Village-Jaralpur, Police Station-Yogapatti, District-West Champaran.
6. Mohan Yadav Son of Gargan Yadav Resident of Village-Jaralpur, Police Station-Yogapatti, District-West Champaran.

... .. Petitioner/s

Versus

THE STATE OF BIHAR Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr.Sanjay Kumar No 7
For the Opposite Party/s :	Mr.Nagendra Prasad
	Mrs. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

4 19-06-2020 The present petition has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

Heard the learned counsel for the petitioners and Smt. Anita Kumari Singh, the learned APP appearing for the State.

The petitioners apprehend their arrest in connection with Thakraha P.S. Case No. 47 of 2010, for the



offence punishable under Sections 147, 148, 149, 341, 323, 324, 325, 594 and 34 of the Indian Penal Code.

At the outset, the learned counsel for the petitioners submits that as far as the FIR in question is concerned, the accused persons including the petitioner herein, had been granted bail by the learned court of Additional Chief Judicial Magistrate by an order dated 03.09.2010 inasmuch as all the sections under which the said FIR was registered, were bailable. However, subsequently charge sheet no. 113 of 2012 was filed under Sections 147, 148, 149, 341, 323, 324, 307, 504 and 34 of the Indian Penal Code against the petitioner herein and the learned court below by an order dated 13.09.2012 had taken cognizance against the petitioner herein under the said sections, for which the charge sheet had been filed by the police.

Thus the submission of the learned counsel for the petitioner is that since the charge sheet has been filed under non-bailable sections of the Indian Penal Code as well and cognizance thereof has been taken by the learned court below, reasonable apprehension of arrest and custody has arisen as far as the petitioners are concerned. It is further submitted that the learned Sessions Judge, West Champaran, Bettiah, by an order



dated 26.11.2019 has held that the anticipatory bail petition of the petitioner is not maintainable, in view of the fact that the petitioners have already been granted bail earlier by the court below, hence has rejected the petition of the petitioners for grant of anticipatory bail.

The learned counsel for the petitioners has referred to a judgment reported in *2004(3) PLJR 491 (Mahendra Prasad Singh vs. The State of Bihar)*, rendered by a co-ordinate Bench of this Court to submit that it has held by this Court that in cases, which are filed initially for non-bailable offences and the accused are taken into custody and then released on bail, an anticipatory bail petition, on the ground that such accused is having an apprehension of arrest, cannot be held to be maintainable, however, in case such an accused person appears before the learned court below, the learned court below shall consider his prayer for bail in accordance with law keeping in view the well established principle to the effect that a person who is already on bail shall not be denied such privilege unless there is any allegation of misuse etc. It is thus prayed that the present petition be disposed of in light of the aforesaid judgment rendered by a co-ordinate Bench of this Court in the case of Mahendra Prasad Singh (supra).



The learned A.P.P. appearing for the State has got no objection.

Having regard to the submissions made by the learned counsel for the petitioners as also taking into account the law laid down by a co-ordinate Bench of this Court in the case of Mahendra Prasad Singh (supra), the present petition stands disposed of in light of the law laid down by a co-ordinate Bench of this Court in the case of Mahendra Prasad Singh (supra) and the petitioners are granted liberty to appear before the learned court below within a period of six weeks from today, whereupon the learned court below shall consider the prayer of the petitioner for grant of bail in accordance with law keeping in view the well established principle of law that a person who is already on bail, shall not be denied such privilege unless there is any allegation of misuse etc.

With the aforesaid observations, the present petition for grant of anticipatory bail stands disposed of.

(Mohit Kumar Shah, J)

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