

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 21609 of 2020

Arising Out of P.S. Case No.-37 Year-2019 Thana-Bounsi District-Banka

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1. Sekh Israile, son of Sri Sekh Hasim, resident of Village Liladah Mohani Godda, P.S. Godda, District Godda (Jharkhand)
 2. Awadesh Yadav @ Awadhesh Yadav, son of Sri Panchanand Yadav, resident of village Gajiyadih Kairi, P.S. Bounsi, District Banka

... .. Petitioners

Versus

1. The State of Bihar
2. The Assistant Director, Mines and Geology Department, Banka

... .. Opposite Parties

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Appearance :

For the Petitioners : Mr. Ajay Mukherjee
For the Opposite Parties : Mr. Arun Kr. Singh No. 5

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 12-08-2020 Heard learned counsel for the parties.

This application for anticipatory bail arises out of Bounsi P.S. Case No. 37 of 2019, disclosing the offence punishable under Sections 379/411 of the Indian Penal Code, Section 40(8) of the BMMC Rule 1972, Section 8 of Bihar Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules 2003, Section 15 of the Environment Protection Act and Section 3 of Prevention of Damage to Public Property Act, 1984.

It is the case of the prosecution that a police official in



course of general patrolling noticed two tractors loaded with sand. He attempted to intercept the vehicle so as to enquire as to whether the sand was legally extracted and was being transported under valid authority or not. On seeing the police drivers of both the vehicles managed to flee away. The tractors were seized and there was no document available to support legit transportation of the sand. This led to lodging of the FIR. The petitioners are admittedly owner and driver of one of the vehicles bearing Registration No. BR51G-5435.

It is, however, the case of the petitioners that because the sand was not recovered from their possession and they have been implicated only because they are owner and driver of the said vehicle, no offence under various provisions indicated in the FIR is made out against them. It has been stated that petitioner no. 1 is ready to deposit the amount of loss caused to the State exchequer because of illegal extraction of sand.

There is no averment in the application that petitioner no. 2 was not driving the vehicle when the same was intercepted. There is no plea that there was any permit for carriage of sand. As a matter of fact, there is no denial in the application seeking anticipatory bail that the sand so recovered from the tractors in question was illegally extracted. No plea has



been taken that the owner of the vehicle, who is petitioner no. 1 in the present application, was unaware of the fact that the driver of the vehicle was using the vehicle for illegal purpose.

In the background of above-noted admitted facts, this Court is required to consider whether the petitioners deserve anticipatory bail in the wake of exponential rise in registration of cases of illegal extraction/ theft of sand, which is an important mineral for the State of Bihar and significant for the State exchequer. This Court has experienced numerous cases coming up of similar nature which creates an impression that sand smugglers are active in the State of Bihar who are thriving in connivance with the persons who have been given responsibility to check it.

It has been argued on behalf of the State of Bihar that illegal extraction of sand causes huge loss to the State exchequer to the tune of Rs. 600 crores to 700 crores per year.

This Court cannot lose sight of the fact that illegal sand mining causes erosion which leads to shifting of villages on the river bank. It also causes ecological imbalance.

Since this Court is of the, *prima facie*, view that offence of such nature can be committed only under a well design strategy involving group of sand smugglers which has far



reaching delirious effect on the society, I am not inclined to grant the petitioners privilege of anticipatory bail. Their custodial interrogation may be required by the police for unearthing the larger conspiracy. The Court is further of the view that grant of anticipatory bail may adversely affect the investigation, there being chance of the petitioners tampering with the evidence. Their release on bail may hamper probe.

Having regard to the nature of allegation and the stage of investigation, the Investigating Agency must have sufficient freedom to probe into the matter in holistic manner.

This application is accordingly dismissed.

The petitioners are directed to surrender before the Court below within four weeks from today and seek regular bail, if so advised. If they do so, their application for regular bail shall be considered on its own merit without being prejudiced by rejection of the present application for grant of anticipatory bail by this Court.

It is also indicated that defects, if any, shall be removed within two months from today.

Since there is a lockdown, the Court has considered it appropriate to adopt following procedure for communication of the present order:-



(i) The order, which has been dictated during the course of the proceedings of virtual Court, shall be communicated to me on my e-mail I.D. by the Secretary.

(ii) The corrected copy of the order shall be transmitted by me from my e-mail I.D. to the Secretary, which shall be treated to be the authentic copy of the order passed by this Court today in the present proceeding.

(iii) Hard copy of the order, duly signed by me, shall be preserved in my residential office for documentation and future use, if any.

(iv) Let a copy of the order be communicated to the learned court below through e-mail or any other appropriate electronic mode by the Registry.

Let steps be taken by the Registry for uploading of the present order without compromising with the norms of social-distancing.

(Chakradhari Sharan Singh, J)

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