

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.21212 of 2020**

Arising Out of PS. Case No.-108 Year-2019 Thana- BISFI District- Madhubani

1. MD. LUQEMAN @ MD. LUKMAN Son of Late Safiur Rahman Resident of Village - Kazi Tola Chapariya, P.S.- Bisfi, District - Madhubani
2. Md. Imran Son of Md. Usman Resident of Village - Kazi Tola Chapariya, P.S.- Bisfi, District - Madhubani
3. Md. Irfan Son of Md. Imran Resident of Village - Kazi Tola Chapariya, P.S.- Bisfi, District - Madhubani
4. Md. Kamran Son of Md. Imran Resident of Village - Kazi Tola Chapariya, P.S.- Bisfi, District - Madhubani
5. Abdul Rahman @ Md. Abdur Rahman Son of Md. Imran Resident of Village - Kazi Tola Chapariya, P.S.- Bisfi, District - Madhubani
6. Md. Faizan Son of Md. Luqeman @ Md. Lukman Resident of Village - Kazi Tola Chapariya, P.S.- Bisfi, District - Madhubani
7. Md. Soban Son of Md. Luqeman @ Md. Lukman Resident of Village - Kazi Tola Chapariya, P.S.- Bisfi, District - Madhubani

... .. Petitioners

Versus

THE STATE OF BIHAR

... .. Opposite Party

Appearance :

For the Petitioner/s	:	Mr. Anil Kumar, Advocate Mr. Saroj Kumar, Advocate
For the Opposite Party/s	:	Mr. Ram Chandra Singh, APP

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

7 24-11-2020 Heard learned counsel for the petitioners and Mr. Ram Chandra Singh, learned A.P.P. for the State.

Petitioners, in the present case, are seeking pre-arrest bail in connection with Bisfi P.S. Case No. 108/2019, G.R. No. 279/19 registered for the offences under Sections 341, 323, 452, 379, 354, 427, 504, 506/34 of the Indian Penal Code and ³/₄ of Prohibition of Witch Craft Act.



Learned counsel for the petitioners submits that as per the prosecution story the petitioner no. 1 demanded Rs. 20,000/- for treatment of his son Abdul Rahman and had promised to return the amount after six months but he was not returning the amount. On 12.04.2019, the informant demanded the said amount to the petitioners whereupon petitioner no. 1 called all the other petitioners and abused as also assaulted the informant. It is alleged that petitioner no. 4 and petitioner no. 5 made the informant to consume one glass of dirt, petitioner no. 1 snatched silver Hansuli and petitioner no. 2 snatched golden ear Bali on which the informant protested, then petitioner no. 1 assaulted her, pulled her on earth and petitioner no.2 torn her blouse, all accused also damaged the Asbestos house of the informant and took out Rs. 10,000/-.

Learned counsel for the petitioners submits that in course of investigation since the police was of the view that only bailable offences are being made out, petitioner no. 1 to 5 were first arrested and then were granted police bail. Police also submitted a charge-sheet against petitioner no. 1 to 5 under bailable sections of the Indian Penal code. Petitioner nos. 6 & 7 were not sent up for trial but the learned Magistrate



differed with the police report and took cognizance of the offences under Sections 379 and other non-bailable sections of the Indian Penal Code. All these petitioners have been summoned to appear. Under these circumstances the petitioners apprehend that on their appearance they may be taken in custody by the learned court below and hence this prayer for anticipatory bail.

Mr. Ram Chandra Singh, learned A.P.P. for the State has submitted that because petitioner no. 1 to 5 were granted police bail after their arrest on 29.05.2019, they must abide by the terms of bail and they should appear before the learned court below and pray for regular bail. He has submitted that so far as petitioner no. 1 to 5 are concerned, their prayer for anticipatory bail cannot be maintained. In this connection, he has relied upon the judgment of learned coordinate Bench of this Court in the case of **Mahendra Prasad Singh Vs. The State of Bihar** reported in **2004(3) PLJR 491**, **Kripanand Prasad @ Karu Yadav & Ors. Vs. The State of Bihar** reported in **2008(3) PLJR 268** and in the case of **Jagnarayan Yadav Vs. The State of Bihar** reported in **2010(2) PLJR 684**.

Having heard learned counsel for the petitioners and



learned A.P.P. for the State, this Court is of the considered opinion that so far as petitioner no. 1 to 5 are concerned, the fact that the petitioner no. 1 to 5 were taken into custody and then released on bail by police, an application for anticipatory bail would not be maintainable particularly keeping in view the opinion of the learned coordinate Bench in the case of **Mahendra Prasad Singh (Supra)**. The fact of this case are nearer to the facts of the said case. In this case also though the case was lodged under non-bailable sections but because of the subsequent developments as the police decided to submit a charge-sheet only under bailable sections and the petitioner no. 1 to 5 were given benefit of police bail, the prayer for anticipatory bail would not be maintainable.

Let petitioner no. 1 to 5 appear in the court below within six weeks from today and make a prayer for regular bail which will be considered by the learned court below in accordance with law and keeping in view the principle as has been noticed in the case of **Mahendra Prasad Singh (Supra)** that a person who is already on bail shall not be denied such privilege unless there is any allegation of misuse etc.

So far as petitioner no. 6 & 7 are concerned, they were not on police bail and this Court finds that there is no



specific allegation against them, hence the Court is inclined to grant privilege of anticipatory bail to petitioner no. 6 & 7, let the petitioner no. 6 & 7 above-named in the event of their arrest or surrender within a period of six weeks from today in connection with Bisfi P.S. Case No. 108/2019, G.R. No. 279/19 be released on bail on furnishing of bail bonds of Rs. 25,000/- (twenty five thousand) each with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate, Benipatti, subject to the conditions as laid down under Section 438 (2) of the Cr.P.C. i.e.

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court.

And further condition that the court below shall verify the criminal antecedent of the petitioner no. 6 & 7 and



in case at any stage it is found that the petitioner no. 6 & 7
have concealed their criminal antecedent, the court below
shall take step for cancellation of bail bond of the petitioners.

This application is partly allowed.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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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'.

