

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.25975 of 2020**

Arising Out of PS. Case No.-176 Year-2019 Thana- JANDAHA District- Vaishali

SHRUTI KUMARI D/o Shambhu Paswan R/o Village- Basantpur, P.S.-
Jandaha, District- Vaishali.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Manish Kumar S/o- Suresh Paswan R/o Village and P.O.- Alipur, P.S.-
Mehnar, District- Vaishali

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sandeep Kumar, Adv.
For the Opposite Party/s : Mr.Nirmal Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 15-10-2020 Heard learned counsel for the petitioner and Mr.
Nirmal Kumar Sinha, learned A.P.P. for the State.

Petitioner in her second attempt has moved this court seeking privilege of anticipatory bail in connection with Jandaha P.S. Case No.176/2019 registered for the offence under Section 304(B)/34 of the Indian Penal Code.

Learned counsel for the petitioner has drawn attention of this court towards the order dated 18.11.2019 passed in Cr. Misc. No. 68890/2019 by a learned coordinate Bench of this Court. The order is contained in Annexure '1' to the present application.

Learned counsel reiterates that the petitioner in this



case has no concern with the family of the husband of the deceased, she is a co-villager and it is a case of false implication of the petitioner. It is his submission that on earlier occasion when learned coordinate Bench was informed by the then learned A.P.P. for the State that proclamation against the petitioner has already been issued and the same has been affixed on the house of the petitioner, the learned coordinate Bench disposed off the application with a direction to the petitioner to surrender in the court below within three weeks from the date of receipt of the copy of the order and it was observed that “the court below shall verify the above submission of the informant that proclamation has been issued and if it is found, the petitioner has to surrender and pray for regular bail, otherwise the court below shall release the petitioner on bail to his own satisfaction.”

Mr. Sandip Kumar, learned counsel has vehemently argued before this court that in fact the learned coordinate Bench of this court could not be addressed on the settled legal proposition that issuance of proclamation alone may not be a proper consideration for rejection of prayer for anticipatory bail. He has referred the judgment in the case of **Lavesh vs.State (NCT of Delhi)** reported in **(2012) 8 SCC 730**.



Learned counsel has further relied upon yet another judgment of Hon'ble Apex Court in the case of **Ravindra Saxena Vs. State of Rajasthan** reported in **(2010) 1 SCC 684** to submit that in the said case anticipatory bail was granted to the accused in his third attempt. In fact, learned counsel wants this court to hear the matter on it's own merit leaving aside the fact that a proclamation has been issued against the petitioner and that the same has been affixed on her house. Learned counsel has tried to impress upon this Court by saying that in-laws have been granted privilege of anticipatory bail.

Learned A.P.P. for the State has opposed this prayer and in the opinion of this Court rightly so.

This Court finds that in fact what the learned counsel for the petitioner is looking for is a review of the order dated 18.11.2019 and in sum and substance his submissions are that the learned coordinate Bench has not considered the case of the petitioner on merit, therefore, it would be open for this court to enter into the merit of the case and take a view thereon. This Court is afraid such contentions of the petitioner are devoid of merit and the same is required to be rejected. No doubt, learned coordinate Bench of this Court has in it's operative part taken a view that in case the proclamation has been issued the petitioner



has to surrender and pray for regular bail, in the earlier part of the order the learned coordinate Bench has taken note of the submission of learned counsel for the petitioner that the petitioner has no concern with the family of the deceased. At first instance, this court is not persuaded to accept the submission that the review of the order of learned coordinate Bench would be permissible and at the same time, this Court has noticed that there is no denial of the fact that proclamation has been issued against the petitioner and the same has been affixed on her house.

In the case of Lavesch (supra), paragraph '12' reads as under:-

"12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as "absconder". Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."

This being the position, considering the nature of the order of the learned coordinate Bench the petitioner has no option but to surrender and pray for regular bail. It goes without saying that once the petitioner surrenders in the court below her



prayer for regular bail is required to be considered on it's own merit without being prejudiced by the order of this Court and the parameters for grant of regular bail would be independent one based on the guidelines provided by the Hon'ble Apex Court in several judicial pronouncements including one in the case of **X Vs. State of Telangana** reported in **(2018)16 SCC 511** and in the case of **Neeru Yadav Vs. State of Uttar Pradesh & Anr.** reported in **(2016) 15 SCC 422**. It will be open for the petitioner to place all such judicial pronouncements which will be available to her in order to assist the Court below.

This application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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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'.

