

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24682 of 2020

Arising Out of PS. Case No.-346 Year-2019 Thana- HARSIDHI District- East Champaran

SK. RIYAZUDDIN @ MAJISTER S/o Late Sheikh Yahiya Resident of
Village- Chintamanpur, P.O.- Chatiya, Areraj, P.S.- Malahi (Gobindganj),
District- East Champaran (Motihari).

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Prafull Chandra Jha, Advocate
For the informant	:	Mr. Dilip Kumar Tondon, Advocate
For the State	:	Mr. Manoj Kumar no. 1, APP

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

3 23-12-2020 Heard learned counsel for the petitioner and learned
counsel for the State through video conferencing.

The petitioner has filed the instant application for grant of anticipatory bail apprehending his arrest in connection with Harsidhi P.S. Case no. 346 of 2019 registered under sections 302, 307, 120B and 34 of the Indian Penal Code and section 27 of the Arms Act.

As per allegation in the FIR, it is stated by the informant that on the date of occurrence his son Sahid Hussain and Pintu Tiwary proceeded for some work. At about 9 a.m. he received information that his son had been shot dead by five named accused persons including the petitioner herein. On reaching the hospital he found his son to have died in the ICU.



It is stated that the accused persons along with others, on the previous day had threatened the informant that his son would be killed. It is further stated that the other accused persons, in Saudi Arabia had been committing multiple crimes on the informant and for one occurrence Turkolia Raghunathpur P.S. Case no. 438 of 2019 was registered.

It is submitted by learned counsel for the petitioner that the allegations as levelled in the FIR are false and concocted and have been made for oblique reasons. It is further submitted that from reading of the FIR itself, admittedly the informant is neither an eye-witness nor does he disclose the source of his information. For the sake of argument even if the allegations are accepted, they are general and omnibus in nature. It is further submitted that there is previous enmity between the parties which is borne out from the documents brought on record as annexures as also the materials that has transpired in course of investigation. It is submitted that the petitioner was also made an accused in Turkolia Raghunathpur P.S. Case no. 438 of 2019 wherein he was enlarged on anticipatory bail by the learned Court below itself. It is further submitted that in course of investigation, the witnesses have neither taken the name of the petitioner nor have they assigned any role to him.



The application for bail is opposed by learned counsel for the State and learned counsel appearing for the informant. It is submitted by learned counsel for the informant that not only the petitioner is a named accused in the FIR but he is one of the persons who fired and killed the son of the informant because of old enmity. It is further submitted in reference to paragraph nos. 38 and 41 of the case diary that in course of investigation a secret information was received to the effect that the other accused persons who were living out of country had provided money to this petitioner to get in touch with the criminals present in the jail and to get the son of the informant murdered. It is submitted that even otherwise the petitioner being an absconder and from perusal of paragraph no. 144 of the case diary wherein the process under section 83 Cr.P.C. has been initiated, the learned counsel for the informant submits that the said process could only be initiated after the process under section 82 has been concluded and the petitioner having been declared an absconder or a proclaimed offender. That being so, the prayer for anticipatory bail of the petitioner would not be maintainable and for this proposition learned counsel for the informant relies on the judgment in the case of Laves v. State (NCT of Delhi) [(2012) 08 SCC 730] and State of Madhya



Pradesh v. Pradeep Sharma [(2014) 2 SCC 171)].

The case diary called for in the case has been received.

Having gone through the materials on record as also the materials that has transpired in course of investigation it transpires that as per the FIR, the persons accompanying the son of the informant was Pintu Tiwary. The confessional statement of Pintu Tiwary has been taken in course of investigation wherein he does not name the petitioner. Further, in course of investigation it transpires that the Investigating Officer caught hold of the CCTV footage of two areas in question where the motorcycle borne assailants are stated to have followed the deceased. On comparison of the two, the Investigating Officer with the assistance of the other people came to the conclusion that the four persons on the motorcycle were as named in the case diary and the petitioner has not been named therein also. So far as the maintainability of the anticipatory bail application is concerned, in the case of Lavesha (Supra) the Hon'ble Supreme Court has observed that the person against whom a warrant has been issued, is hiding himself and has been declared as a proclaimed offender in terms of section 82 of Code of Criminal Procedure, is not entitled to the relief of anticipatory bail. There



is no record/ order on record declaring the petitioner as an proclaimed offender under section 82 Cr.P.C.

Having heard learned counsel for the parties and taking into consideration the facts and circumstance of the case as narrated above, the Court is inclined to enlarge the petitioner on anticipatory bail. The petitioner is directed to surrender in the Court below within a period of eight weeks from today and in the event of his arrest or surrender in connection with Harsidhi P.S. Case no. 346 of 2019 (G.R. no. 7791/2019), they will be enlarged on bail on each of them furnishing bail bond of Rs. 10,000/ (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, East Champaran, Motihari subject to the conditions as laid down under section 438(2) of the Cr.P.C.

(Partha Sarthy, J)

Prakash/-

U			
---	--	--	--

