

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20955 of 2020

Arising Out of PS. Case No.-457 Year-2019 Thana- MAKHDUMPUR District- Jehanabad

1. Dilip Kumar S/o Raju Yadav
2. Anil Kumar S/o Krishna Yadav
Both are resident of village- Banshraj Bigha, P.S.- Makhdumpur (Tehta),
District- Jehanabad

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr. Dharendra Kumar Sinha, Adv.

For the State : Mr. Ajay Kumar No. 2, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

ORAL ORDER

3 27-01-2021 Heard learned counsel for the petitioners as well as
learned Additional Public Prosecutor for the State.

Petitioners apprehend their arrest in connection with
Makhdumpur P.S. Case No. 457 of 2019 registered for the
offences punishable under Sections 457 and 380 of the Indian
Penal Code.

Petitioners are named in the first information report
but only suspicion was raised against them. In course of
investigation, not a single prosecution witness claimed to have
seen the petitioners committing the alleged crime nor anything



was recovered from their respective houses. Moreover, it came to light during course of investigation that prior to institution of this case, there was some dispute between the petitioners and informant of the present case. It is surprising enough that investigating officer did not succeed to collect any evidence against the petitioners but in spite of that the supervising authority directed to submit charge sheet against the petitioners for the offences punishable under Sections 457, 379 of the I.P.C.

The learned court below rejected the prayer for anticipatory bail of petitioners vide order dated 25.11.2019 on the ground that offence under Section 380 of the I.P.C. is punishable with imprisonment up to seven years and offence under Section 457 of the I.P.C. is punishable with imprisonment up to five years and in the light of guidelines given by Hon'ble Apex Court in Arnesh Kumar case, the anticipatory bail petition filed on behalf of the petitioners was not maintainable. However, learned court below failed to take note of this fact that the offence of lurking house-trespass or house-breaking by night with intention to commit theft is punishable up to 14 years and, therefore, in the aforesaid circumstance, decision of Arnesh Kumar is not applicable in the present case.

Considering the aforesaid facts and circumstances as



well as submissions of the parties, provisional bail granted to the petitioners vide order dated 06.11.2020 is, hereby, confirmed.

(Hemant Kumar Srivastava, J)

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