

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26615 of 2020

Arising Out of PS. Case No.-10 Year-2020 Thana- BHAWANIPUR District- Purnia

PUKAR PASWAN Son of Late Bhumi Paswan Resident of Village- and Post office Baliya Bhawanipur Rajdham, Police Station- Bhawanipur (Baliya O.P.), District- Purnia.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr.Adv
	:	Mr.Dr. Bidhu Ranjan,Adv
For the Opposite Party/s	:	Mr.Shyam Kumar Singh, APP
For the State	:	Mr. Birendra Kumar, Adv
For the Informant	:	Mr.Manoj Kumar, Adv

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

3 29-01-2021 Heard the parties.

The petitioner is apprehending his arrest in a case registered for the offences punishable under Sections 147,148,149,447,452,341,342,323,324,302 and 120B of the Indian Penal Code.

According to FIR at about 12.15 in the night, all the FIR named accused, 10 in number, including a female accused entered into the house of the informant. The informant woke up and identified the accused persons in the light of electric bulb. Co-accused-Arun Sharma tagged the mouth of the informant with cloth and tied him with the Chauki (bed) and threatened to kill. Thereafter co-accused-Hira Mandal, Siyaram Sharma cut



the throat of Gunjan Devi, the mother of the informant. Others were keeping hold on her.

Learned counsel for the petitioner submits that in fact the informant is not an eye witness of the occurrence and due to enmity, after the occurrence, the petitioner and others have been implicated in this case. No specific role is assigned to the petitioner. The impugned order refers to different paragraphs of the case diary which contains hearsay evidence. The learned court below swayed away only considering the seriousness of the allegation without noticing the actual role played by the petitioner. Petitioner has got no criminal antecedent.

Learned counsel for the informant submits that in view of the allegation the petitioner does not deserve prayer for anticipatory bail. Moreover, co-acused-Manish Sharma, whose case was similar to that of the petitioner, has already been refused anticipatory bail by a Coordinate Bench of this Court in Cr.Misc. No.30821 of 2020 relying on the judgment of the Hon'ble Supreme Court in **Jai Prakash Singh Vs. State of Bihar & Ors**, reported in (2012)4 SCC 379.

In **Jai Prakash Singh's Case**, the Hon'ble Supreme Court has considered earlier judgment in **Siddharam Satlingappa Mhetre Vs. State of Maharashtra**, reported in



(2011)1 SCC 694, wherein certain parameters were laid down for consideration of an application for anticipatory bail. Paragraph-112 and 113 of the judgment are being reproduced below:

"112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or the other offences.

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

(vi) Impact of grant of anticipatory bail



particularly in cases of large magnitude affecting a very large number of people.

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over-implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be



considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record."

In **Jai Prakash Singh** case, several named accused including those, whose anticipatory bail was cancelled by the Hon'ble Supreme Court, allegedly made indiscriminate firing causing death of a person and the Doctor had found multiple firearm injury on the person of the deceased. Therefore, if the matter is examined from the actual role played by the accused, the petitioner does not bear any specific allegation



rather specific allegation of commission of murder is against the named person. The petitioner has not got any criminal antecedent. Hence, there is no question of conviction of the petitioner in any case of cognizable offence. There is no material to substantiate that the petitioner is likely to flee the justice or he would commit identical offence in the event of release on anticipatory bail.

Since only the informant is eye witness of the case and no individual role is alleged against the petitioner rather name of real culprit is disclosed in the FIR, hence in my view, the petitioner deserves prayer for anticipatory bail.

Accordingly, let the petitioner, above named, in the event of his arrest or surrender before the court below within a period of thirty days from the date of receipt of the order, be released on bail on furnishing bail bond of Rs.20,000 (Twenty Thousand) with two sureties of the like amount each to the satisfaction of learned court below where the case is pending in connection with Bhawanipur P.S.Case No. 10 of 2020, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure and other following conditions:

(a) The petitioner shall fully cooperate with the trial of the case and shall remain physically present in court as and



when directed by the learned Trial Judge, failing which the learned court below shall be at liberty to cancel the bail bond of the petitioner.

(b) Both the bailors shall be resident of territorial jurisdiction of the learned Court-below having immovable property.

(c) The petitioner shall not leave the country without permission of the learned Trial Court.

(Birendra Kumar, J)

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