

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25823 of 2020

Arising Out of PS. Case No.-38 Year-2017 Thana- WAJIRGANJ District- Gaya

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1. BHARAT SINGH S/o Sachida Singh @ Late Sachidanand Singh
 2. Sujeet Singh S/o Late Awadh Singh
 3. Lallan Singh @ Lalan Singh S/o Sachida Singh @ Sachidanand Singh
All Resident of Village-Kolhana, Police Station-Wazirganj, District-Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Pramod Kumar,Adv

For the Opposite Party/s : Mr.Shyam Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

5 29-01-2021 Heard the parties.

The petitioners are apprehending their arrest in a case registered for the offences punishable under Sections 147,148,149,302,201 and 120(B) of the Indian Penal Code and 27 of the Arms Act.

Petitioners-Bharat Singh, Sujeet Singh and Lallan Singh @ Lalan Singh are FIR named accused in connection with Wazirganj P.S.Case No.38 of 20147 registered under Sections 147,148,149,302,201 and 120(B) of the Indian Penal Code as well as under Section 27 of the Arms Act.

After investigation, the police did not send up the petitioners for trial. However, during trial, after examination of



some of the prosecution witnesses, the petitioners were summoned to face trial alongwith other co-accused in exercise of power under Section 319 Cr.P.C. by order dated 13.02.2020. When the petitioners approached before the learned Trial Judge for anticipatory bail, the same was refused by order dated 09.07.2020 passed in S.Tr.No.21 of 2019 arising out of Wazirganj P.S.Case No.38 of 2017.

The informant, who is father of the deceased is only eye witness of the occurrence.

According to FIR, deceased-Ashok Singh left for Civil Court, Gaya on a motorcycle at 9.40 A.M. on 24.01.2017, the informant alongwith Sunita Devi, the wife of the deceased and Chandrama Kumar, the son of the deceased was following to Wazirganj market. As soon as the informant reached near the railway crossing, he saw that the accused persons had surrounded Ashok Singh and co-accused Arun Singh was assaulting him with Pasuli (sharp cutting weapon) and co-accused Nakut Singh was also assaulting him with sharp cutting weapon.

Petitioner- Sujeet Singh had fired from his pistol, however, there is no allegation of commission of any injury or targeting the firing towards anyone. Petitioner-Bharat Singh had



caught the hand of the deceased. Petitioner-Lallan Singh @ Lalan Singh assaulted with stone.

The postmortem report reveals that the Doctor had found incised wounds, 13 in number, on different parts of the body of the deceased. Some abrasions were also noticed at the right arm, right knee and right iliac spine.

Learned counsel for the petitioners submits that the injuries found by the Doctors was attributable to accused-Arun Singh and Nakut Singh. Abrasion is possible even by fall when more than one person was assaulting to the deceased. The petitioners are victim of over implication. Hence, they were not found to be involved in the police investigation. Moreover, they are ready to face the trial.

Learned counsel for the informant opposed the prayer for anticipatory bail on the ground that several persons including the petitioners were involved in the occurrence. Petitioners also committed the individual act mentioned in the FIR. Petitioner-Bharat Singh and petitioner-Sujeet Singh have got criminal antecedent. Hence, they do not deserve protection of anticipatory bail.

In Siddharam Satlingappa Mhetre Vs. State of Maharashtra, reported in (2011)1 SCC 694, the Hon'ble



Supreme Court laid down certain factors and parameters to be considered while considering 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."

One of the considerations is the nature and gravity of the accusation and the exact role of the accused. In the act alleged which caused death, the main role were played by co-accused-Arun Singh and Nakut Singh and not by the petitioners. Though the petitioners have got some criminal cases against them, however, there is nothing on the record to



substantiate that they have been convicted earlier for any cognizable offence. Petitioners have appeared before the learned court below soon after issuance of summoning order under Section 319 Cr.P.C. and are pursuing their legal right for anticipatory bail, there is nothing to substantiate that they are going to flee from justice. The background and nature of allegation does not show that after grant of bail, the petitioners would commit similar offence and if that would come to the knowledge of the Court that petitioners have committed cognizable offence after release on anticipatory bail that would be a ground for cancellation of anticipatory bail in this case also.

Considering the fact that the petitioners have been summoned under Section 319 Cr. P.C. to face trial and also considering the accusation against the petitioners in the FIR, in my view, they deserve prayer for anticipatory bail.

Hence, let the petitioners, above named, in the event of their 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) each with two sureties of the like amount each to the satisfaction of learned court below where the case is pending in connection with S.T.No.21/2019/293/2017 arising out of



Wazirganj P.S.Case No. 38 of 2017, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure and other following conditions:

(a) The petitioners 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 petitioners.

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

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

(Birendra Kumar, J)

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