

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3301 of 2021

Arising Out of PS. Case No.-248 Year-2020 Thana- ARA NAGAR District- Bhojpur

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ASHISH PASWAN, S/O LATE PRADEEP PASWAN, R/o village- Gausganj,
P.S.- Ara Nagar, District- Bhojpur (Bihar)

... .. Appellant

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. P.K. Shahi, Sr. Advocate Mr. Shankar Kumar, Advocate
For the Respondent/s	:	Mrs.Usha Kumari 1, Spl. P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 04-10-2021 At the outset, Mr. P.K. Shahi, learned Senior Counsel representing the appellant submits that the appellant has filed a supplementary affidavit stating therein that he has got nine criminal antecedents and that in all those cases he is on bail except Sl. no. 9. To that extent paragraph ‘3’ of this application stands modified.

Heard Mr. P.K. Shahi, learned Senior Counsel assisted by Mr. Shankar Kumar, learned Advocate for the appellant and Mrs.Usha Kumari 1, learned Special P.P. for the State.

The appellant in the present case is seeking setting aside of the order dated 15.04.2021 passed in SC/ST (B.P. No. 1550 of 2021) arising out of Ara Town P.S. Case No. 248 of 2020 registered for the offence punishable under Sections 302, 387, 34 of the Indian Penal Code, Section 27 of the Arms Act and Section



3(2) of the Scheduled Castes and Scheduled Tribes Act by learned 1st Additional Sessions Judge-cum-Special Judge, SC/ST Act, Bhojpur, Ara whereby and whereunder the prayer for regular bail of the appellant has been rejected. He is in custody since 13.07.2020.

As per the prosecution story, the informant got an information from one Dipak Paswan that Ashish Paswan (the appellant), Avinash Paswan, Ankit Paswan, Sarvjeet Paswan, Amarjeet Paswan, Ram Parwesh Paswan, Chhotu Yadav as also two other unknown persons have shot at Mithun Paswan near Janki Temple. It is alleged that when the informant rushed there and saw the injured Mithun Paswan lying in the pool of blood, the injured Mithun Paswan who happened to be the son of the informant told that Ashish Paswan (this appellant), Avinash Paswan, Amarjeet Paswan, Sarvjeet Paswan, Ankit Paswan, Ram Pravesh Paswan, Chhotu Yadav and two unknown persons had shot at him. While taking him to the hospital the injured succumbed to his injuries and died.

Learned Senior Counsel for the appellant submits that the post-mortem report discloses nine entry wounds but the allegations against the appellant and other co-accused are general and omnibus. There is no independent material against the appellant and in the nature of the allegations the co-accused



namely Amarjeet Paswan, son of Krishna Paswan, Amarjeet Paswan @ Tillu, son of Ram Pravesh Paswan, Avinash Paswan, Ravi Paswan and Chotu Yadav have been granted bail by learned coordinate Benches of this Court in Cr. Appeal (SJ) No. 2469 of 2021, Cr. Appeal (SJ) No.1385 of 2021, Cr. Appeal (SJ) No. 2545 of 2021, Cr. Appeal (SJ) No. 1956 of 2021 and Cr. Appeal (SJ) No. 1324 of 2021 respectively.

Learned Senior Counsel has, therefore, made submissions based on principles of parity. It is his submission that the case of the appellant cannot be distinguished from those who have been granted bail by learned coordinate Benches of this Court.

Mrs. Usha Kumari 1, learned Special P.P. for the State has opposed the prayer for bail of the appellant. Learned Special P.P. submits that in course of investigation, the allegations made by the informant in the F.I.R. have been supported by an eye witness namely Dipak Paswan, son of Raju Paswan whose statement is recorded in paragraph '24' of the case diary. Learned A.P.P. further submits that the cases in which bails have been granted by learned coordinate Benches of this Court and the considerations therein are distinguished inasmuch as it would appear from the orders placed before this Court that the statement of the eye witness present in paragraph '24' of the case diary were not brought to the notice of



the learned coordinate Benches of this Court.

It is further submitted that recently in the case of **Shri Mahadev Meena Vs. Raveen Rathore and Another** passed in **Cr. Appeal No. 1089 of 2021 (arising out of SLP (Criminal) No. 4072 of 2021** decided on 27th of September, 2021, the Hon'ble Apex Court has observed on the principle of parity and reference may be made to paragraph 13 of the judgment which reads as under:

“13. Having analyzed prima facie the circumstances in which the offence was committed and the nature of the allegations, it will be useful to refer to the precedents of this Court governing the grant of bail. A two-judge Bench of this Court in **Ram Govind Upadhyay v. Sudharshan Singh** has listed the considerations that govern the grant of bail without attributing an exhaustive character to them. This Court has observed:

“4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused



beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) 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.”

This Court has further elucidated on the power of the court to interfere with an order of bail in the following terms:

“3. Grant of bail though being a discretionary order – but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained.”

The above principles have been reiterated by a two judge Bench of this Court in **Prasanta Kumar Sarkar v. Ashis Chatterjee**:

“9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;



- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

In Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana, a two judge Bench of this Court of which one of us (Justice DY Chandrachud) was a part, has held that the High Court while granting bail must focus on the role of the accused in deciding the aspect of parity. This Court observed:

“26....The High Court has evidently misunderstood the central aspect of what is meant by parity. Parity while granting bail must focus upon the role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The High Court has proceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law.”

Learned A.P.P. submits that it is a case of gruesome murder of the son of the informant who suffered nine entry wounds and the appellant has been specifically named in the F.I.R. The submission is that the appellant has got nine criminal antecedents further indicates the involvement of the appellant in so many cases and, as such, his release at this stage is likely to result in tampering with the evidence in various ways.

Having regard to the facts and circumstances of the case



and the materials placed before this Court, this Court agrees with the submissions of learned A.P.P. for the State for the reasons that firstly the statement of the eye witness as appearing in paragraph '24' of the case diary has not been brought to the notice of the learned coordinate Benches of this Court in the case of the co-accused who have been granted privilege of bail, therefore, principle of parity cannot be applied and secondly there being specific allegation against the appellant getting further supported from the nine entry wounds noticed in the post-mortem report and then the conduct of the appellant in having nine criminal antecedents which gives an apprehension to the prosecution that if released on bail at this stage he has got potential to threaten the witnesses and that may result in tampering with the evidence and interfering with the course of trial, in the circumstances, this Court is not inclined to interfere with the impugned order. This appeal fails.

Let the trial be expedited.

(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'.

