

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.72210 of 2019**

Arising Out of PS. Case No.-423 Year-2019 Thana- GOPALGANJ TOWN District-
Gopalganj

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KAMINI SINGH, aged about 59 years, Female, wife of Murlidhar Singh,
Resident of Flat No. 401, Shyama Shaswatam Ara Gardens Road, P.S.-
Rupaspur, District- Patna.

... .. Petitioner

Versus

The State of Bihar.

... .. Opposite Party

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with
CRIMINAL MISCELLANEOUS No. 2191 of 2021

Arising Out of PS. Case No.-423 Year-2019 Thana- GOPALGANJ TOWN District-
Gopalganj

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SATENDRA KUMAR @ SATYENDRA KUMAR (Male), aged about 56
years, son of Deo Nandan Prasad, Resident of Subhashish Vihar New
Pataliputra Road No.2, Boring Road, Patna, P.O. and P.S.- Pataliputra, Distt.-
Patna.

... .. Petitioner

Versus

The State of Bihar.

... .. Opposite Party

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Appearance :

(In CRIMINAL MISCELLANEOUS No. 72210 of 2019)

For the Petitioner/s	:	Mr. P.K. Shahi, Senior Advocate Mr. Sumeet Kumar Singh
For the Informant	:	Mr. Manoj Kumar, Advocate
For the State	:	Mr. Binod Kumar No.3, APP

(In CRIMINAL MISCELLANEOUS No. 2191 of 2021)

For the Petitioner/s	:	Mr. Y.V. Giri, Senior Advocate Mr. Ashish Giri, Advocate
For the Informant	:	Mr. Manoj Kumar, Advocate
For the State	:	Mr. Binod Kumar No.3, APP

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

13 29-01-2021 Heard Mr. P.K. Shahi, learned Senior Advocate

assisted by Mr. Sumeet Kumar Singh, learned Advocate for the

petitioner in Criminal Miscellaneous No.72210 of 2019, Mr.

Y.V. Giri, learned Senior Advocate assisted by Mr. Ashish Giri,



learned Advocate for the petitioner in Criminal Miscellaneous No.2191 of 2021, Mr. Binod Kumar No.3, learned APP for the State and Sanjay Kumar, learned Advocate for the informant.

2. Since, both the cases arise out of the same F.I.R. they are being heard together and are being disposed of by this common order.

3. In these cases, the petitioners are seeking anticipatory bail in connection with Gopalganj Town P.S. Case No.423 of 2019, registered for the offence under Sections 302 / 34 of the Indian Penal Code.

4. An F.I.R. has been lodged by Rana Pratap Singh, son of the deceased, *inter alia* stating that on 29.08.2019 at about 1:00 P.M. he along with his father had gone to the residence-cum-office of the Chief Engineer namely, Murlidhar Singh, within the Gandak Colony in connection with payment of bill. The informant remained standing outside the house and his father was called by Chief Engineer Murlidhar Singh, in the house. Jitendra Prasad Singh, Satendra Kumar, wife of Murlidhar Singh along with three to four unknown persons were already there inside the room. After few minutes, loud voice starting coming out from the room, whereupon he rushed



to the room and found that Mulidhar Singh was asking his wife namely, Kamini Singh to bring oil container, whereupon she brought a gallon of oil. Thereupon, three to four persons caught hold his father, Murlidhar Singh sprinkled the oil over his body and set him ablaze. It has also been alleged that the informant tried to save his farther, started screaming, whereupon Ashok Kumar Singh, Dharmendra Kumar Singh, Shashi Bhushan Shahi and Sanjay Kumar Singh barged inside the room, on seeing them, all the accused persons fled away. Thereafter, all the persons took the victim to the Sadar Hospital, Gopalganj, on the way, his father told him that incident took place on account of demand of arrears of payment and earlier, they had threatened to kill him. It has also been alleged that Sadar Hospital, Gopalganj, referred his father to the Gorakhpur Hospital for better treatment but, on reaching Gorakhpur, his father died. It has been alleged that all the accused persons have put fire on the body of his father with an intention to kill him.

5. Paragraph no.3 of the case diary shows that at about 10:30 P.M. the police was informed about the incident and, thereafter, they went to the hospital, entered into the Emergency Ward and found that the victim was lying and bandage wrapped in his hand. When the Police put question



upon the victim, they were informed that he is unable to speak and it was disclosed that victim is Rama Shankar Singh, father of the informant, for passing the bill of Rs.60,00,000/- Mullidhar Singh, Chief Engineer, was demanding Rs.15,00,000/-, when he refused to make payment, his father was called in the residence -cum- office of the Chief Engineer, lit the fire on his body and he was being referred for better treatment. It further shows that a Police team went to the Gandak colony, found that residence was locked and from backside, smoke was coming out and found some cloths were burnt, they separated un-burn cloths, on peeping, found the incident took place inside the room of the front side of the house. Whereupon, Senior Officers requested the Magistrate and F.S.L. Team to come and conduct forensic examination. As the F.S.L. team came in the night house was sealed and it has also been recorded that before reaching the hospital, the victim died. In paragraph no.4 of the case diary, it has been stated that they have scaled the boundary wall and also sealed the house and the security personnel were alerted.

6. Mr. P.K. Shahi, learned Senior Advocate for the petitioner in Criminal Miscellaneous No.72210 of 2019 has argued that as per paragraph no.24 of the case diary, the place of



occurrence was peon's quarter within the boundary of the office -cum- residence of the Chief Engineer, door was found to be bolted from inside, which was broken by the employees of the office. The officers of the Department with the help of subordinate staffs took the victim to the hospital. It has also been mentioned that the smoke was found on the cloth of the officers and staffs of the department, which was obtained from them. It has also been mentioned that when the victim was admitted to the hospital, the officers of the Department had given information to the family members of the victim.

7. Mr. P.K. Shahi, learned Senior Advocate further argued that the statement of the informant in the written complaint is completely improbable as he was standing outside the house and it is not supposed from him to hear the conversation in between his father (victim) and the Chief Engineer. He further placed reliance on paragraph nos.56, 62 and 109, wherein it has been stated that it is not a case of murder but it is a case of suicide, which is also supported from the F.S.L. report, wherein it has been mentioned that it is a suspected case of suicide.

8. It has also been argued that this case does not fall in the category of abatement and the informant was not an eye



witness to the incident as has been alleged, inasmuch as, the officers and staffs, who have been examined by the Police, have stated that they had informed the relative of the victim. It has further been submitted that the informant, as he has claimed that he tried to douse the fire to save his father when the father was found burning, the informant must have received some injury, which is absent with the informant. So, the claim of the informant that he was an eye witness to the incident in incorrect statement.

9. Mr. Y.V. Giri, learned Senior Advocate, for the petitioner in Criminal Miscellaneous No.2191 of 2021 has adopted the argument of Mr. P.K. Shahi, learned Senior Advocate, and further supplemented his argument by placing relying on paragraph nos. 28, 41, 43, 44, 50, 56 and 188 of the case diary. It has also been submitted that there is no bar to approach this Court second time for anticipatory bail as earlier his bail application was dismissed as withdrawn. In support of his submission, he has placed reliance on the decision of the Hon'ble Supreme Court rendered in the case of *Ravindra Saxena v/s The State of Rajasthan* reported in (2010)1 SCC 684.

10. Learned counsel for the petitioners have placed



reliance on the order dated 21.10.2020 passed by a co-ordinate Bench in Criminal Miscellaneous NO.79082 of 2019, whereby the co-accused Murlidhar Pandey has been granted anticipatory bail.

11. Learned counsel for the informant has submitted F.I.R. shows that informant was present but the entire investigation is being diverted in different line and further submitted that till date, no charge-sheet has been filed as the same is still under investigation.

12. Learned counsel for the State has submitted that apart from informant there are other persons, who also deposed that the present petitioners were involved in the commission of crime and there is specific allegation has been attributed against petitioner - Kamini Singh that she brought the gallon of oil, which was sprinkled on the body of the victim and set him ablaze and Satendar Singh had caught hold the victim.

13. For understanding the contour of anticipatory bail, it will be proper to examine section 438 of the Code of Criminal Procedure, which prescribes the grant of anticipatory bail. The relevant portion of the aforesaid Section 438 of the Code of Criminal Procedure are as follows:-



“438. Direction for grant of bail to person apprehending arrest. - Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter-alia, the following factors, namely—

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he 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; and.

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail;

Provided that, where the High Court or, as the case may be, the



Court of Session, has not passed any interim order under this Sub-Section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.”

14. On forensic examination of Section 438 of the Code of Criminal Procedure, it is clear that the High Court or the Court of Sessions while considering the grant of anticipatory bail, the discretion is exercised properly and in the suitable manner, the person who approached would be granted bail, one of the ingredients has been provided that while exercising its discretion, the Court will see the nature of gravity of offence and the antecedents of the applicant, possibility of the applicant to flee from the justice and where the accusation has been made with the object of injury or humiliating the applicant by having so arrested.

15. The parameter and contour of consideration of salutary provision of Section 438 of the Cr.P.C. has been discussed and dealt with in the case of ***Siddharam Satlingappa Mhetre v/s The State of Maharashtra and Others*** reported



(2011) AIR S.C. 312. In that case, detailed consideration has been made regarding scope of grant of anticipatory bail under Section 438 Cr.P.C. and in that case the Hon'ble Supreme Court has considered previous judgments and given the thrust for the personal liberty of each citizen. The Court in paragraph no.93 of the Judgment has taken a Judicial note that large number of under-trials are languishing in jail for a long time even for allegedly committing very minor offences. This is because Section 438 Cr.P.C. has not been allowed its full play. It has also been held that it is not extraordinary in the sense that it should be invoked only in exceptional or rare cases and the Hon'ble Supreme Court has taken view that while considering the bail application, the Court should try to maintain fine balance between the societal interest vis-a-vis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent Court. In paragraph no.122 final outcome has been culled out with respect to exercise of power under Section 438 of the Criminal Procedure Code, the Court would look into the essential ingredients i.e. the nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made.



Basically, these are essential prescriptions have been provided in section 438 of the Code of Criminal Procedure.

16. It will be relevant to quote paragraph nos. 93 and 122 of the aforesaid judgment, which are as follows:-

“93. It is a matter of common knowledge that a large number of under-trials are languishing in jail for a long time even for allegedly committing very minor offences. This is because section 438, Cr.P.C. has not been allowed its full play. The Constitution Bench in Sibbia's case (supra) clearly mentioned that Section 438 Cr.P.C. is extraordinary because it was incorporated in the Code of Criminal Procedure, 1973 and before that other provisions for grant of bail were sections 437 and 439 Cr.P.C. It is not extraordinary in the sense that it should be invoked only in exceptional or rare cases. Some courts of smaller strength have erroneously observed that section 438 Cr.P.C. should be invoked only in exceptional or rare cases. Those orders are contrary to the law laid down by the judgment of the Constitution Bench in Sibbia's case (supra). According to the report of the National Police Commission, the power of arrest is grossly abused and clearly violates the personal liberty of the



people, as enshrined under Article 21 of the Constitution, then the courts need to take serious notice of it. When conviction rate is admittedly less than 10%, then the police should be slow in arresting the accused. The courts considering the bail application should try to maintain fine balance between the societal interest vis-a-vis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent court.

122. 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.”

17. This Court is examining the present cases for grant of anticipatory bail on the parameter and contour mentioned in the aforesaid judgment. It will be proper to examine different paragraphs of the case diary i.e. paragraph nos. 3, 4, 5, 7, 10, 15, 16, 17, 18, 19, 20, 24, 41,43, 98, 109, 158, 188 and 195.

18. In paragraph no.3, it has been stated that the Police on receipt of information went to the hospital where the son of the victim was present but, the victim was not in a position to speak. It has further been stated that there is demand of



Rs.15,00,000/- for passing the bill of Rs.60,00,000/-. The Police has also gone to the residence-cum- office of the Chief Engineer and behind the house it was found that smoke was coming out and burning cloths were found and on pipping, it was found that in front room of office-cum- residence premises the factum of incident took place. In paragraph no.4, it has been stated that in presence of Magistrate, the Police Personnel scaled the boundary wall, where alleged offence was committed for verification and alerted the security personnel to remain vigilant. The Inquest Report is in paragraph no.7 of the case diary, the same was signed by the witnesses namely, Shivshankar Singh and Sanjay Kumar Singh.

19. The informant has further been re-examined and he has specifically stated that he along with his father had gone to the residence-cum-office of the Chief Engineer and his father entered inside the house of the Chief Engineer whereas he remained outside the house where all accused persons were already present. The informant further stated that when he heard the loud voice from the room, he rushed there and found that Mulidhar Singh allegedly asked his wife to bring oil container and all persons caught hold his father, Murlidhar Singh allegedly sprinkled the oil and set him ablaze. In that manner, in



paragraph nos. 15, 16, 17, 18 and 19, all the witnesses namely, Rana Pratap Singh (informant), Ashok Kumar Singh, Sanjay Kumar Singh, Shiv Shankar Singh and Shashi Bhushan Shahi respectively, have supported the prosecution case and also stated the mode and manner of act allegedly committed by the present petitioners. All the witnesses have stated that on the instruction of her husband, the petitioner namely, Kamini Singh allegedly brought gallon of oil and all accused persons including Satendra Kumar @ Satyendra Kumar allegedly caught hold the victim and allegedly set him ablaze. However, it appears that at second stage, reasons best known to the Police, the alleged place of occurrence has been shifted to the house of Peon and gave the sketch where the incident took place. The F.S.L. report is attached to the case diary and tentative opinion has been given that suspected case of suicide. Paragraph nos. 41, 43, 50 and 56 are the statements of Upendra Mishra, Sita Ram Bhujang, Vijay Chaurasiya, wherein they all have given a different version and it is said that they have taken the victim to the hospital but, their presence was not recorded by the Police in the Hospital.

20. From perusal of paragraph no.98 of the case diary, it appears that an S.I.T. team has been formed to investigate the



present case. Paragraph no.109 is the statement of Krishna Yadav. Paragraph no.158 of the case diary is the statement of Niranjana Kumar, paragraph no.195 is the statement of Sukhdev Prasad and paragraph no.200 is the statement of Ram Iqbal Dubey. All the witnesses are the Peons of the Department and one thing all have said that there was a bill allegedly lying for payment and victim was asked to remove his rest articles lying in the premises. Paragraph no.188 is the Supervision Note, wherein it has been mentioned that *prima facie* allegation made against accused persons appears to be true but, under Sections 306/120B/34. It has further been recorded that there is an allegation of corruption against accused Murlidhar Singh.

21. From perusal of paragraph nos. 15 to 19 of the case diary, it appears that all the persons have claimed to have rushed to the place of offence, tried to rescue the victim and carried him to the hospital for treatment but, the staffs, who were attached with the office of the Chief Engineer, have given a different story altogether but, one fact is common that they have said that there was a dispute with regard to payment of bill. It also appears that till date, no charge-sheet or final form has been submitted and still the case is under investigation. It also appears that while passing the order dated 21.10.2020 passed in



Criminal Miscellaneous No.79082 of 2019, paragraph nos. 4, 15, 17, 18 and 19 of the case diary has not been brought to the notice of the Court, wherein specific imputation has been made against the petitioners and their acts done while committing the offence, inasmuch as, the finality of investigation has not been reached.

22. Looking to the gravity of charge in which the victim was a contractor has been allegedly put to death mercilessly by putting under fire and specific allegation has been made against the petitioner - Kamini Singh that on the instruction of her husband, she brought the gallon of oil and petitioner - Satendra Kumar @ Satyendra Kumar along with other accused persons caught hold the victim and accused Murlidhar Singh sprinkled oil and set him ablaze, this Court is not persuaded by the argument of the petitioners and not inclined to grant the relief of anticipatory bail to these petitioners. Accordingly, the prayer for bail of the petitioners is rejected.

23. However, before parting with the order, this Court gives direction to the Director General of Police, Bihar, Patna, to ensure that the investigation should be carried out in proper and fair manner, if so required, the Director General of Police,



form a new team of S.I.T. of impeccable officers of the Police Department as the allegations are very serious in nature that a contractor, who was admittedly allowed the work of repair of the residence -cum- office but, allegedly demand of cut was made by the Chief Engineer, in failure to make payment, the incident took place.

24. This Court is not examining the issue of filing of successive anticipatory bail but, in proper case this Court will look into and decide the issue as the learned counsel for the petitioner has claimed that there is no bar to file successive anticipatory bail application till arrest is effected. As this Court has considered the case on its merit, there is no need to decide this issue.

25. Accordingly, both these bail applications are rejected.

(Shivaji Pandey, J)

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