

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37144 of 2020

Arising Out of PS Case No.-293 Year-2019 Thana- DULHIN BAZAR District- Patna

Mukesh Kumar, aged about 35 years, Male, Son of Suresh Singh, Resident of Village- Barichack, PS- Dulhin Bazar, District- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Sinha, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 02-07-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Ashok Kumar Sinha, learned counsel for the petitioner and Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The petitioner apprehends arrest in connection with Dulhin Bazar PS Case No. 293 of 2019 dated 07.11.2019, instituted under Sections 341, 323, 307 and 379/34 of the Indian Penal Code.

4. The allegation against the petitioner in a case lodged by his younger brother, is that when he was sitting at his mill, the petitioner along with two other unknown persons had come and assaulted him with iron rod causing injury on head.



5. Learned counsel for the petitioner submitted that the younger brother is a habitual offender in the sense that he keeps on assaulting his parents, pressurizing them to transfer the entire ancestral property in his favour and on the day of the alleged incident, the fact is that he had assaulted the mother for which she has lodged Dulhin Bazar PS Case No. 294 of 2019, against the informant under Sections 341, 323, 379 and 506/34 of the Indian Penal Code. Learned counsel submitted that when the mother was being assaulted by the informant, the petitioner being the elder brother had intervened to prevent such assault and some minor scuffle took place but not of the magnitude, as has been alleged in the FIR. Learned counsel submitted that even the father of the petitioner has lodged complaint against the informant that he keeps issuing life threat if the father did not transfer all the ancestral property in favour of the informant. Learned counsel submitted that the injury report also discloses that the same are simple in nature and further that the petitioner has no criminal antecedent. Learned counsel submitted that the police also have not submitted any chargesheet against the petitioner and in fact, has given him the privilege of Section 41A of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code').



6. Learned APP submitted that the petitioner has already been granted protection under Section 41A of the Code and, thus, there is no apprehension of him being arrested, which does not occasion any interference by the Court in the present case.

7. On a response from learned counsel for the petitioner, it was submitted that the privilege of Section 41A of the Code given by the police is transitory in nature and might change any time and the petitioner cannot be confident of such protection and the same will not be a bar for this Court to consider the present application for grant of pre-arrest bail. It was further submitted that if later on, for any reason, the petitioner is chargesheeted, automatically such protection would end.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the event of arrest or surrender before the Court below within six weeks from today, the petitioner be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned Judicial Magistrate, 1st Class, Danapur, District-Patna in Dulhin Bazar PS Case No. 293 of 2019, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 and further, (i) that one of the bailors shall be a close relative



of the petitioner, (ii) that the petitioner and the bailors shall execute bond and give undertaking with regard to good behaviour of the petitioner and (iii) that the petitioner shall co-operate with the police/prosecution and the Court. Any violation of the terms and conditions of the bonds or the undertaking or failure to co-operate shall lead to cancellation of his bail bonds.

9. It shall also be open for the prosecution to bring any violation of the foregoing conditions of bail by the petitioner, to the notice of the Court concerned, which shall take immediate action on the same after giving opportunity of hearing to the petitioner.

10. The application stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

AFR/NAFR	
U	
T	

