

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1118 of 2021

Arising Out of PS. Case No.-160 Year-2020 Thana- RAJIVNAGAR District- Patna

1. Krishna Mohan Lal, Son of Late Chandra Narayan Das, Resident of Mohalla-Rajeev Nagar, Road No.17, P.S.-RAJEEV Nagar, District-Patna.
2. Ruma Lal @ Roma Lal, Wife of Krishna Mohal Lal, Resident of Mohalla-Rajeev Nagar, Road No.17, P.S.-RAJEEV Nagar, District-Patna.

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s	:	Mr. Y.V.Giri, Sr. Advocate Mr. Anil Kumar Singh, Advocate
For the Opposite Party/s	:	Mr. Anuj Kumar Srivastava, A.P.P.
For the Informant	:	Mr. Baidya Nath Thakur, Advocate Mr. Prabhakar Thakur, Advocate Mr. Shankar Kumar Thakur, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 15-12-2021 Heard Mr. Y.Y.Giri, learned Senior Counsel assisted by Mr. Anil Kumar Singh, learned Advocate, Mr. Baidya Nath Thakur, learned counsel for the informant and Mr. Anuj Kumar Srivastava, learned A.P.P. for the State.

These two petitioners are the father-in-law and mother-in-law respectively of the deceased. They are seeking pre-arrest bail in connection with Rajeev Nagar P.S. Case No. 160 of 2020 originally registered for the offence punishable under Section 306 of the Indian Penal Code but after investigation Police has submitted a chargesheet under Section 304B read with Section 34 of the Indian Penal Code. The



petitioners have no criminal antecedent.

As per the First Information Report (Annexure '1') the marriage between the son of these petitioners and the daughter of the informant was solemnized in the year 2015. The informant admits that after marriage the couple were living happily and the daughter of the informant had no complaint with her Sasural.

According to the informant, her son was murdered in January, 2020, thereafter her daughter was living in distress and pain. The informant was told about this by her Sasural people on many occasions whereupon the informant was telling them to get her treated. Allegation is that the Sasural people did not get her treated. On 29.05.2020 at about 7.10 A.M. the petitioner no. 1 gave a telephonic call to the informant to inform that her daughter has committed suicide. The informant admits that she reached Patna with her daughter and son-in-law and thereafter participated in the cremation of the dead body.

She, however, lodged the present F.I.R. on 30.05.2020. The thrust of allegations are contained in a question that if her daughter was in depression why she was not got treated and if she had set herself on fire then why she was not taken to the hospital. She raised a doubt in the F.I.R. that her daughter has



burnt herself because of the mental agony caused by her mother-in-law.

Learned Senior Counsel submits that a bare perusal of the First Information Report would show that the daughter of the informant was living happily in her Sasural. There was no demand of dowry and the informant was fully aware of the fact that her daughter was suffering from depression after the murder of her brother. In fact, there is no allegation that these petitioners had burnt the daughter of the informant, the allegation is that as to why she was not got treated for her depression and then if she burnt herself why she was not taken to the hospital.

Learned Senior Counsel submits that the petitioner no. 1 had lodged one F.I.R. with Rajeev Nagar Police Station on 29.05.2020 giving rise to Rajeev Nagar P.S. Case No. 03 of 2020 in which he had explained the circumstances under which the daughter-in-law of petitioner no. 1 was found in burnt condition and while taking her to the hospital she died. In fact, the petitioner no. 1 had also stated that she was in depression and had set herself on fire. This version of petitioner no. 1 is getting support to a large extent from the fardbeyan of the informant which was lodged on the subsequent day.



Learned Senior Counsel submits that the husband of the deceased had been taken into judicial custody but after his custody of almost one year he has been granted regular bail by a learned coordinate Bench of this Court in Cr. Misc. No. 1701 of 2021.

It is further brought to the notice of this Court that earlier when these petitioners had applied for pre-arrest bail in the learned court below, they were granted privilege of provisional bail during pendency of the anticipatory bail application, however, on final hearing the anticipatory bail application of the petitioners were rejected vide impugned order dated 14.10.2020 passed by learned Additional Sessions Judge XII Court, Patna.

In the circumstances stated above, learned Senior Counsel submits that these petitioners who are father-in-law and mother-in-law and against whom there is no specific allegation either of demand of dowry or committing torture, deserve privilege of anticipatory bail on such terms and conditions which this Court may deem just and proper to secure their appearance in course of trial.

Mr. Baidya Nath Thakur, learned counsel for the informant has entered appearance. He has mainly contended on



the issue of entertainability of this anticipatory bail application. Mr. Thakur submits that earlier these petitioners were granted provisional anticipatory bail by the learned court below and pursuant to that they had surrendered and submitted their bail bonds, therefore, on final hearing after their prayer for anticipatory bail has been rejected, they could not have assailed the said order before this Court and the only option which they had, to go behind the bars.

Learned counsel submits that these petitioners have been declared absconder during pendency of the present application before this Court, therefore, in view of the judgment of the Hon'ble Supreme Court in the case of **Lavesh vs. State (NCT of Delhi)** reported in **(2012) 8 SCC 730**, in the case of **State of Madhya Pradesh vs. Pradeep Sharma** reported in **(2014) 2 SCC 171** and in the case of **Jarasindhu Choubey vs. Amresh Chaubey alias Amresh Kumar Chaubey and Another** reported in **(2012) 12 SCC 455** and one of the Hon'ble Jharkhand High Court in the case of **Saddam Hussain vs. The State of Jharkhand** passed in **A.B.A. No. 3185 of 2020**, the anticipatory bail application is fit to be rejected.

Learned counsel has further placed before this Court a copy of the judgment rendered by the Hon'ble Supreme Court



recently in the case of **Prem Shankar Prasad vs. The State of Bihar and another** reported in **AIR 2021 SC 5125** to strengthen his submission.

On the other hand, Mr. Y.V. Giri, learned Senior Counsel has in reply submitted that the judgments on which reliance has been placed by learned counsel for the informant were rendered in a completely different set of facts and circumstances. It is his submission that in the present case the F.I.R. was lodged when the entire country was under lockdown due to the surge of COVID-19. These petitioners were seeking their remedy of anticipatory bail before the learned court below and they had been granted interim protection by way of provisional bail. The petitioners were, therefore, very much available for purpose of investigation but at no point of time the Investigating Officer had issued any notice calling upon these petitioners to be present for interrogation or visited the residence of these petitioners to interrogate them. After rejection of their prayer for anticipatory bail by the learned court below the petitioners were still seeking their remedy before this Court by filing the present application which was registered in this Court on 04.01.2021 but soon thereafter the Court had to close down due to the second wave of COVID-19. The application



could not be taken up for consideration during the pandemic period when the Courts were trying to work through virtual mode in limited manner. Even during this period the Investigating Officer never called upon the petitioners to participate in the investigation, no attempt at all was made to visit the place of the petitioners.

The submission is that in the routine and casual manner the Investigating Officer requested the learned court below to declare these petitioners absconder. The learned court below was not informed of the fact that the petitioners are before the Hon'ble High Court in anticipatory bail application, therefore, the order declaring the petitioners absconder would not take away the statutory remedy available to the petitioners in this case.

Learned Senior Counsel has taken this Court through the provisions of Section 82 and 83 of the Code of Criminal Procedure. Learned Senior Counsel submits that the very opening word of Section 82 Cr.P.C. speaks that "if any court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such court may publish a written proclamation



requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.”

Learned Senior Counsel submits that if the Court deems just and proper that such proclamation be published in the daily newspaper but in this case no such proclamation has been published.

Learned Senior Counsel has placed before this Court the order dated 15.03.2021 passed by the learned court below in which the court has simply recorded that the I.O. had reported that the petitioners are absconding to evade their arrest and on that statement of the I.O. the learned court below simply directed to issue process under Section 82 Cr.P.C. This, according to learned Senior Counsel, was a mere bald statement of the I.O. which was not sufficient to form the belief in the judicious mind of the learned court below.

Learned Senior Counsel has relied upon the judgment in the case of **Anil Kumar @ Anil Paswan vs. State of Bihar and others** reported in **2020(2) BLJ 507** to submit that such routine and casual approach of the I.O. does not satisfy the requirement of Section 82 Cr.P.C. In this case the I.O. had never issued any notice to the accused to appear and no such material



was brought to the notice of the learned court below, the court was informed that the petitioners are before this Hon'ble Court, therefore, on a mere bald statement of the I.O., the court cannot form a belief.

Learned Senior Counsel, therefore, submits that the privilege of pre-arrest bail of an accused cannot be taken away by such routine and casual approach because that would be violative of the constitutional mandate under Article 21 of the Constitution of India. If the procedure as prescribed under Section 82 Cr.P.C. has not been followed by the learned court below and the exceptional circumstance of COVID-19 situation has not been taken care of, these petitioners cannot be allowed to suffer for no fault on their part.

Learned Senior Counsel submits that it is a well settled that the law bends before justice and further it has been held in the case of **Bharat Petroleum Corporation Ltd. And Anr.Vs. N.R. Vairamani & Others** reported in **2004 (8) SCC 579** by the Hon'ble Supreme Court that the judgments of the Courts should not be cited like an euclid's theorem and a slight change in the facts of the case would make a sea difference in the judgment of the Court.

Learned Senior Counsel has distinguished the



judgments cited at the Bar on behalf of the informant on the facts of the present case.

Mr. Anuj Kumar Srivastava, learned A.P.P. for the State has gone through the case diary, this Court repeatedly called upon him to peruse the diary and make a statement as to whether at any point of time the I.O. had issued notice to the petitioners to come for interrogation. This Court also called upon him to show from the case diary any entry made on any date during the period the petitioners were on provisional bail or during the period when their application remained pending before this Court showing that the I.O. had visited the place of the petitioners for purpose of interrogation and that the petitioners were not present. The answer of the learned A.P.P. is that there is neither any such entry present in the diary nor any fact relating to issuance of notice is mentioned in the case diary.

Having regard to the materials placed before this Court, this Court is required to first discuss the objection taken on behalf of the informant as to very entertainability of the anticipatory bail application. The reliance has been placed on the judgment of Hon'ble Supreme Court in the case of **Lavesh** (supra). In the said case the prayer for anticipatory bail of the appellant was rejected vide order dated 05.11.2011. The



appellant had moved thereafter an application for anticipatory bail before the High Court which was dismissed on 05.12.2011. Aggrieved by the said order of the High Court the appellant had preferred appeal by way of Special Leave Petition. In this case the Hon'ble Supreme Court found from the materials and the information that the appellant was not available for interrogation and investigation and was declared as absconder. Taking note of this fact in paragraph '12' of the judgment, the Hon'ble Supreme Court observed inter alia ".....normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail....." The basic fact based on which the present view is taken is that the materials before the Hon'ble Supreme Court made it clear that the appellant was not available for interrogation in the said case. In the present case this Court finds that there is absolutely no material to suggest that these petitioners were not available for interrogation and investigation. The I.O. had no doubt submitted before the



learned court below that the petitioners are absconding or concealing themselves in order to avoid warrant but in terms of Section 82 Cr.P.C. in order to have that belief in the mind of the learned court it was incumbent upon the I.O. to place before the court such materials showing that he had visited the place of the petitioners for purpose of investigation and interrogation and that the petitioners were found absconding. This is to be remembered that it was the second wave of COVID-19 which was more dreaded than the first wave. The courts were either closed or were functioning in limited manner.

Before this Court no material has been placed on behalf of the prosecution or the informant that during the period when the petitioners were on provisional bail or thereafter any notice was issued to them for purpose of interrogation. Thus, in the considered opinion of this Court, the very foundation of the present case is on a different premise.

Learned counsel for the informant has relied on the judgment of the Hon'ble Apex Court in the case of **Jarasindhu Choubey** (supra).

In the present case the F.I.R. was lodged on 13.11.2009. The accused prayed for anticipatory bail before the learned court below but the same was rejected observing that the accused may surrender before the learned court below and



urge all such points which may be available in the regular bail. After investigation chargesheet was filed on 16.04.2010 against the accused Jwala Pandey. Action for proclamation and attachment had been taken against the other accused persons including respondent no. 1 as they were absconding. On 15.04.2010 the property of the absconder respondent no. 1 was attached under Section 83 Cr.P.C. Thereafter, Cr. Misc. No. 6542 of 2010 was filed by respondent no. 1 which came up for hearing before a learned Single Judge of the High Court on 19.07.2010 and the same was allowed.

Again the facts of the case in **Jarasindhu Choubey** (supra) materially differ with the facts of the present case.

In the present case the petitioners were granted privilege of interim anticipatory bail and thereafter, when the learned court below finally rejected their prayer for anticipatory bail, they had moved to this Court seeking their statutory remedy and their application was pending consideration. But because of the on-set of COVID-19 the working of the courts were affected badly and the case could not be taken up for consideration. It is during this period, that the petitioners have been declared absconder. Thus, in this case the petitioners have moved before this Court much before they were declared



absconder. There was no plausible reason for the learned court below to ignore the unprecedented situation. Drastic powers vested in the court are required to be executed with more care and circumspection.

The another judgment of the Hon'ble Supreme Court rendered in the case of **Prem Shankar Prasad** (supra) is again rendered in a completely different facts situation. In this case learned trial court had dismissed the anticipatory bail application on 29.01.2019 on merits as well as on the ground that the accused is absconding and even the proceedings under Sections 82 and 83 Cr.P.C. had been issued, therefore, the accused was not found entitled to the anticipatory bail. Thereafter, the accused had moved to the Hon'ble High Court and his application for anticipatory bail was allowed. This Court finds again that the facts of the present case are completely different from that of **Prem Shankar Prasad** (supra). The another judgment which has been placed before this Court is that of Hon'ble Jharkhand High Court in the case of **Saddam Hussain** (supra) in the said case the admitted fact was that a process under Sections 82 and 83 Cr.P.C. had been issued. The Hon'ble Jharkhand High Court has not dealt with the detail facts of the said case, therefore, this Court is unable



to appreciate the facts of the case in which the judgment has been rendered in the case of **Saddam Hussain** (supra).

Having discussed the case laws which have been placed before this Court, this Court is of the considered opinion that this case stands on a completely different footing and that unprecedented situation of COVID -19 cannot be forgotten. The entire country was under lockdown and in such circumstances if the application of the petitioners remained pending with this Court and during the pendency they have been declared absconder by the learned court below, in the considered opinion of this Court, the petitioners cannot be ousted on this ground alone. It will be travesty of justice if the fundamental rights of a citizen though an accused in a criminal case, to seek his basic rights and legal remedy by way of anticipatory bail is taken away on the ground pleaded on behalf of the informant. Even such pleadings of the informant has no basic foundation that these petitioners were absconding. This Court has taken note of the safeguards provided to an accused under Section 82 Cr.P.C. The order of the learned court below which has been placed before this Court is based on a bald statement of the Investigating Officer as there is no entry in the case diary that during the period discussed above the Investigating Officer had



either given any notice to the accused petitioners to participate in the investigation or had visited their place of residence to interrogate them. Article 21 of the Constitution of India mandates that the life and liberty of a citizen cannot be taken away without following the established procedures of law.

In this case if the petitioners are ousted from seeking their remedy before this Court on the solitary ground that they have been declared absconder when during the pendency of this application though and in the unprecedented situation of COVID-19, in the opinion of this Court, it will be in breach of the fundamental rights of the petitioners. The contention of learned counsel for the informant that because the petitioners had got provisional anticipatory bail and they had submitted the bail bonds, therefore, on final rejection of their application they have to surrender and their remedy before this Court ceases, is noted only for purpose of rejection.

This Court, therefore, does not agree with the submission of learned counsel for the informant. This application has already been entertained by the learned co-ordinate Bench of this Court on 27.08.2021. It seems that on the said date no objection as to the entertainability of the application was taken on behalf of the informant. The learned co-ordinate



Bench has also granted protection to the petitioners from arrest by way of interim order.

On merit of the application, this Court has noticed from the FIR that the daughter of the informant was happily living in her Sasural and she had no complaint whatsoever from her Sasural people. She had also given birth to two children who were 2 and ½ years and 5 months old respectively. The informant has admitted that her daughter was living in depression after the murder of her brother. There is no allegation that these petitioners had burnt her, the husband of the deceased has already been granted regular bail by the learned court below, this Court, therefore, finds no reason as to why the prayer for anticipatory bail of these petitioners be refused.

This Court is inclined to grant privilege of anticipatory bail to the petitioners. Accordingly, this Court directs that the petitioners above named in the event of their arrest or surrender within four weeks from today be released on bail on furnishing of bail bond of Rs.25,000/- (Rupees Twenty Five Thousand/-) with two sureties of the like amount each to the satisfaction of learned Sub-Judge-cum-A.C.J.M.-III, Patna in connection with Rajiv Nagar P.S. Case No. 160 of 2020, subject to the conditions as laid down under Section 438(2)



Cr.P.C.

And further condition that the court below shall verify the criminal antecedent of the petitioners and in case at any stage it is found that the petitioners have concealed their criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioners. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

The application stands allowed.

(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'.

