

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8563 of 2022

Arising Out of PS. Case No.-30 Year-2021 Thana- ECONOMIC OFFENCES, BIHAR
District- Patna

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Dinesh @ Dinesh Kumar @ Dinesh Singh Son Of Late Akhileshwar Singh
R/O- Kurthaul, P.S.- Parsa Bazar, District- Patna

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Sr. Advocate
		Mr. Abhay Shankar Singh, Advocate
For EOU	:	Mr. Bishwa Nath Prasad Sinha, Sr. Advocate
		Mr. Vijay Anand, Advocate
For the Opposite Party/s	:	Mr. Sunil Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
ORAL ORDER

4 11-03-2022 The applicant is given out of turn hearing in pursuant of the order dated 10.03.2022 passed by Hon'ble Supreme Court in Special Leave Petition (Criminal) Diary No.976 of 2022 whereby this Court is requested to decide bail application of the applicant on its own merit by 15.03.2022.

The applicant is an accused in Crime No. 30 of 2021 against whom the charge sheet for the offences punishable under Sections 201/504/505 of the Indian Penal Code as well as under Section 66 of the I.T. Act came to be filed by the Economic Offences Wing of the State on 11.02.2022. By this application



under Section 439 of the Cr.P.C., he is seeking his release on bail during pendency of the trial after filing of the charge sheet.

Heard the learned senior counsel appearing for the applicant/accused. He argued that even if the case sought to be made against the applicant is accepted as it is then also the offences alleged against the applicant are punishable with the three years imprisonment and most of them are bailable in nature. As investigation of the subject offence is over, the applicant deserves to be released on bail. It is further argued that the applicant has repentance for the act alleged against him and as he is in judicial custody, his wife has sworn an additional affidavit to that effect.

The learned senior counsel appearing for the respondent/State has vehemently opposed the application by contending that conduct of the applicant deserves to be noted. He argued that before the learned trial Court the present applicant fully justified his action and has claimed protection as per law. Hence, there is no guarantee that he will not repeat similar offence in future.

On merits, the learned counsel appearing for respondent argued that the case-diary is full of obnoxious material disseminated by the applicant on platforms of the



social media bringing the entire institution of judiciary in disrepute. The learned counsel for the respondent submits that there is sufficient material to connect the applicant to the crime in question.

I have considered the submissions so advanced and also perused the case-diary as well as the supplementary case-diary. I have also perused the material produced by the applicant.

Undisputed facts emerging on record shows that on 15.12.2021 one of the Hon'ble Judge of this Court has noticed the acts of the present applicant in posting various post on the social media bringing the Institute of judiciary in disrepute. Note of this fact was taken. That is how the subject FIR came to be registered by the Deputy Superintendent of Police and the Station House Officer of the Economic Offences Wing, Patna, Bihar, on the very same day itself. It is also not in dispute that on 16.12.2021, the applicant came to be arrested for offences punishable under Sections 201, 504 and 505 of the Indian Penal Code as well as under Section 66 and 67C of the I.T. Act. Routine investigation followed. Ultimately, the charge sheet as indicated in the opening paragraph of this order came to be filed against the applicant on 11.02.2022.



Perusal of the case-diaries shows that the Investigator had seized the cellphone of the applicant. It was subjected to the Forensic Examination and report thereof is also collected. Statement of the witness is also recorded.

On perusal of the case-diary of the subject crime, it will be noticed that the applicant is an advocate having sufficient years of practice. However, he is found to be continuously posting several scandalous, shocking and derogatory post tarnishing the image of the judiciary. Perusal of the case-diary shows that the applicant had targeted Ex-chief Justices of India, Chief Justices of this Court as well as Judges of this Court by his abusive and scurrilous post on the social media. The image of the institution is itself maligned because of such post as seen from the case-diary of the subject crime. Contents hosted on and circulated through Youtube Channel/accounts with URL originated or hosted on the said platform associated with the applicant, as reflected from the case-diary, contains highly objectionable and offensive contents. Similarly, perusal of the case-diary shows that several grossly offensive, scandalous and derogatory messages as well as videos are posted on the Youtube channel and Facebook account of the applicant for maligning the



image of the entire institution of judiciary as a whole, apart from similar such post against the Executives as well as Advocates practicing in this Court.

On this backdrop, though the learned counsel for the applicant attempted to argue that Section 505 of the Indian Penal Code which is the only non-bailable section has no application to the instant case, such argument is wholly unmerited. It is also noticed from the papers of the investigation that as soon as the applicant came to know about the intended action likely to be taken against him he has knowingly cause disappearance of such post and videos by deleting the same in order to screen himself.

Be that as it may, it needs to be noted here that the applicant is seeking relief by resorting to the provisions of Section 439 of the Cr.P.C. The investigation of the case is over. The applicant is charge sheeted for the offences punishable under Sections 201, 504 and 505 of the Indian Penal Code as well as under Section 66 of the I.T. Act as noted above. Section 201 of the Indian Penal Code is bailable and the quantum of punishment is according to the offence in respect of which evidence is caused to be disappeared by the accused. Section 504 of the Indian Penal Code deals with criminal



intimidation with intent to provoke breach of peace. Section 503 of the Indian Penal Code defines the term criminal intimidation. This offence is bailable and prescribed punishment is that of two years or fine or both. The next penal provision invoked against the applicant is punishable under Section 505 of the Indian Penal Code. Whosoever makes, publishes or circulates any statement or report with intent to cause any Officer to disregard or fall in his duty, amongst other provisions, invites punishment for this offence which is for three years or fine or both. This offence is non-bailable one. Section 66 of the I.T. Act deals with computer related offence for which punishment is for three years or fine or both. These are the offences alleged by the prosecution against the present applicant who is reported to be a practicing Advocate of this Court.

Grant or denial of bail invites cautious exercise of judicial discretion based on several factors including:

- (a) The nature and seriousness of accusation;
- (b) The nature of evidence in support of the accusation;
- (c) The severity of the punishment which conviction would entail;
- (d) Impact of grant of bail to the accused on the



society/larger interest of the public or the State;

(e) Reasonable apprehension of tampering of

evidence and obstructing the course of justice;

(f) The character and behaviour of the accused;

(g) Likelihood of the accused fleeing from the
course of justice;

This list cannot be made exhaustive.

At this juncture, it is apologized to note that in **Gurucharan Singh Vs. State (Delhi Admn.)** reported in **(1978) 1 SCC 118**, the Hon'ble Supreme Court while examining the scope of Section 437(1) and Section 439 Cr.P.C. has held thus:

“the nature and gravity of the circumstance in which the offence is committed; the position and status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardizing his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out.”

Similarly, in the case of **State of Kerala Vs. Raneef** reported in **(2011) 1 SCC 784**, following are the observations



of the Hon'ble Supreme Court:

“15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail.”

While deciding **Sanjay Chandra Vs. C.B.I. with Vinod Goenka Vs. C.B.I.** reported in **2011 AIR SCW 6838**, the Hon'ble Supreme Court has laid down the parameters for considering the prayer for bail under Section 439 of the Cr.P.C. and has held thus:

“(i) Ordinarily, persons accused of any offence at the stage of trial, should be enlarged on bail;

(ii) The object of bail is primarily to secure the attendance of the accused at the trial;

(iii) Grant of bail is the rule and refusal is the exception. Presumption of innocence is sacrosanct and, therefore, bail at the stage of trial is imperative to enable accused to look after his own case and



establish his innocence.”

It is thus clear that pretrial detention cannot be punitive. The right to bail is not to be denied merely because sentiments of the community are against the accused. It will have to be noted that the trial will take its own time. Going by the facts of the instant case, wife of the present applicant has sworn an affidavit informing that the applicant has expressed repentance before her for the alleged acts mentioned in the FIR and has assured that in future he would not post any objectionable material on any social media platform. It is also noted that the evidence against the present applicant primarily constitutes documentary evidence. The chance of tampering with the same is remote. The prosecution has not expressed any apprehension that the applicant would not be available for trial, if released on bail. Then comes an apprehension of the prosecution that the applicant may repeat commission of similar acts in future, which he is continuously committing since past several years. This aspect can be taken care of by imposing stringent condition that one such instance and the liberty granted to him by this order shall be recalled.

In the light of foregoing reasons, the applicant deserves to be released on bail but with the following



conditions by this order:-

i. The application is allowed.

ii. The applicant/accused in Crime No. 30 of 2021 registered with Economic Offence Police Station for the offences punishable under Sections 201/504/505 of the Indian Penal Code as well as under Section 66 of the I.T. Act be released on bail on executing P.R. bond of Rs.30,000/- (Rupees Thirty Thousand) and on furnishing two sureties of the like amount to the satisfaction of the trial court with the following conditions: -

(I) The applicant/accused should not extend any threat, promise of inducement to the persons acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the Court or to any police officer.

(II) The applicant/accused should cooperate the trial court in expeditious disposal of the trial against him.

(III) The applicant/accused should not contact the members of the prosecuting party as well as witnesses in this case in any manner till conclusion of the trial.

(IV) The applicant should not repeat commission of similar offences in future and if this fact is noted the learned trial Court shall cancel the bail bonds of the accused



and shall take him in custody.

The applicant to remove all office objections forthwith and the Registry to issue the certified copy of this order only after removal of office objections by the applicant/accused.

(A. M. Badar, J)

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