

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28688 of 2021

Arising Out of PS. Case No.-517 Year-2020 Thana- BARHARA District- Bhojpur

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1. Mahendra Yadav @ Munna Yadav, S/o Late Ram Pravesh Yadav, Residents of Village- Babhangawan, P.S.- Barahara (KRISHNAGARH), District- Bhojpur.
 2. Ravindra Yadav, S/o Late Ram Pravesh Yadav, Residents of Village- Babhangawan, P.S.- Barahara (KRISHNAGARH), District- Bhojpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rakesh Kumar Samrendra, Advocate
For the Informant	:	Mr. Manoj Kumar, Advocate
For the State	:	Ms. Gulnar Begum, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

4 29-04-2022 Heard Mr. Rakesh Kumar Samrendra, the learned Advocate for the petitioners and Mr. Manoj Kumar, the learned counsel for the informant.

The State is represented by the learned APP.

The petitioners seek bail in anticipation of their arrest in connection with Barahara (Krishnagarh) P.S. Case



No. 517 of 2020, dated 01.12.2020, instituted for the offence under Section 365 of the Indian Penal Code.

The petitioners are alleged to have caused disappearance of the uncle of the informant. A suspicion has been raised on them only for the reason that they were seen walking behind the uncle of the informant. The uncle of the informant never returned home and, therefore, it has been suspected by the informant and others that because of the past enmity, the petitioners may have caused the disappearance of the victim.

Mr. Rakesh Kumar Samrendra, the learned Advocate for the petitioners has submitted that assuming but not admitting the aforesaid fact to be true, this could hardly be taken as an evidence towards the complicity of the petitioners in the absence of any other cogent material in support of their guilt.

The victim has not yet been recovered.

Mr. Samrendra has further submitted that even if it is found to be true that there had been some dispute between the uncle of the informant and the petitioners in the



past, but that would not justify such accusation or for that matter, rejection of anticipatory bail of the petitioners. It has further been submitted that during the course of investigation, it was found that the victim had been last seen with some other persons and not the petitioners.

In fact, paragraphs 8 and 9 of the case diary, it has been argued, which has been relied upon by the learned Court below in rejecting the prayer for anticipatory bail of the petitioners, merely reiterates the accusation in the F.I.R. that the petitioners were seen following the uncle of the informant who never returned home.

Apart from this, it has been submitted that the wife of petitioner No. 1 has represented before the Superintendent of Police that after the lodging of this case, the victim is reported to have solemnized the marriage of his daughter on 06.12.2020.

However, such statement has not been verified and this Court does not find anything in the police papers in support of such contention.

This aspect of the matter however requires to be



investigated and if the same is found to be true, the informant could well be prosecuted for falsely implicating petitioners in this case. It is rather surprising that this aspect of the matter, even when it was brought to the notice of the superior police officer, has not been investigated.

Mr. Manoj Kumar, the learned counsel for the informant, on the other hand, has taken a simplistic plea that because in the bail application, a wrong statement with respect to the criminal antecedents of the petitioners was made and only on his pointing out, supplementary affidavit has been filed, detailing the criminal cases in which the petitioners have been made accused, they do not deserve the privilege of anticipatory bail for them to have made a wrong statement before this Court.

Mr. Samrendra, in response to the aforesaid submission, has submitted that there was some miscommunication as a result of which the fact of the petitioners having been made accused in many criminal cases could not be stated in paragraph 3 of the bail application. However, the details of such cases have now



been provided in the supplementary affidavit filed on behalf of the petitioners, which has been sworn by the *Samdhi* of petitioner No. 1.

Mr. Samrendra has further drawn the attention of this Court to paragraph 6 of the supplementary affidavit in which it has been stated that the so-called victim is himself an accused in several cases and in one of such cases, an application has been filed on his behalf under Section 317 of the Code of Criminal Procedure that because of his pre-occupation otherwise, he is not in a position to present himself before the Court.

These aspects need to be gone into by the investigating agency.

In case such assertion against informant is found to be correct during the course of investigation, it would be incumbent upon the Court, then, to initiate a proceeding against the informant for having made a false statement.

However, considering the nature and circumstances under which suspicion has been raised against the petitioners as also that erroneous statement was made in paragraph 3



on their behalf in the first instance, and taking into account that they have criminal antecedents against them though they have been granted bail in such cases, I am not inclined to grant anticipatory bail to them.

The prayer for grant of anticipatory bail to the petitioners is, accordingly, rejected.

However, this Court directs that in case they surrender before the Court below and seek bail, the Court below, after taking into account the above noted aspects, namely, suspicion because of past enmity and the assertion that the so-called victim (the uncle of the informant) has got his daughter's marriage solemnized and, therefore, the presumption that he has hid himself in order to implicate others be taken into account and a reasoned order be passed, without being prejudiced by the fact that the present anticipatory bail application on behalf of the petitioners has not been entertained by this Court.

Needless to state that the accusation of the petitioners of the victim having concealed himself is to be ascertained before relying upon such statement for passing



any order.

While passing the order, the learned Court below shall also consider the fact that the two of the other accused persons of this case, have been granted the privilege of regular bail by this Court.

The application stands dismissed and disposed off accordingly.

(Ashutosh Kumar, J)

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