

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38705 of 2021

Arising Out of PS. Case No.-301 Year-2018 Thana- KHAGAUL District- Patna

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ARVIND MAHTO @ ARVIND KUMAR S/O SRI RAJENDRA SINGH R/O
VILLAGE-LAKHNIBIGHA P.S. DANAPUR DISTRICT-PATNA.

... .. Petitioner.

Versus

THE STATE OF BIHAR

... .. Opposite Party.

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Appearance :

For the Petitioner : Mr. Rajiv Rai, Senior Advocate.
For the State : Mr. Md. Mushtaque Alam, A.P.P.

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

5 21-04-2022 1. The applicant/accused in Crime No.301 of 2018 registered with Police Station-Khagaul for the offence punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act is seeking his release on bail by filing this second bail application for the reason that three of the co-accused involved in the instant case have been released on bail by the coordinate Benches of this Court.

2. Heard the learned counsel appearing for the applicant/accused. He drew my attention to the F.I.R. lodged by Vijendra Prasad-the brother of the deceased and argued that the First Informant had not expressed suspicion against any particular individual in case of murder of his brother Arun Kumar. It is further argued that Vandana Devi, who claims to be an eye witness to the incident, is, in fact, not an eye witness to



the incident as she had allegedly witnessed the incident after firing of bullets by the accused persons. It is further argued that the coordinate Benches of this Court has found Vandana Devi not to be an eye witness to the subject crime. Reliance is placed on the order dated 27.03.2019 in Criminal Misc. No.17272 of 2019, whereby co-accused Sanjay Paswan is directed to be released on bail by the coordinate Bench of this Court. Similarly, reliance is also placed on the order dated 06.01.2022 in Criminal Misc. No.45991 of 2021, whereby the coordinate Bench of this Court directed release of co-accused Deepak Paswan alias Tenja Paswan on bail. Reliance is also placed on the order dated 06.02.2020 passed in Criminal Misc. No.63837 of 2019, whereby the coordinate Bench of this Court granted pre-arrest bail to co-accused Amit Kumar. With this, it is argued that on the principle of parity, the present applicant is entitled for bail.

3. The learned A.P.P. opposed the application by contending that there is a direct eye witness to the subject crime.

4. I have considered the submissions so advanced and also perused the materials placed on record including the case diary and the counter affidavit filed by the Respondent.

5. Undisputedly, the charge-sheet has been filed after



completion of investigation. Deceased in the instant case is Arun Kumar. His brother Vijendra Prasad had lodged report on 29.10.2018 with an averment that he received information from some unknown persons that his brother Arun Kumar has been killed by some unknown persons by firing a bullet at the head. First informant Vijendra Prasad, who is not an eye witness to the subject crime, reported to the police that he has no suspicion against any body in respect of murder of his brother Arun Kumar. Suffice to say that first informant Vijendra Prasad is not claiming that he has seen commission of murder of his brother Arun Kumar but he has stated that he received information from some unknown persons that his brother Arun Kumar is done to death by firing a bullet on the head.

6. Counter affidavit filed by the State shows that Arun Kumar (since deceased) is the only eye witness in Crime No.86 of 2018 registered with Khagaul Police Station pertaining to murder of Manoj Singh, who happens to be husband of alleged eye witness Vandana Singh.

7. During the course of investigation, the prosecution has recorded statement of Vandana Singh, widow of Manoj Singh. She has stated that deceased Arun Kumar was serving with her establishment as Munshi. As per her version, on the day of the



incident, i.e., on 29.10.2018, she came out of her residence “Vandana Palace” on her vehicle and behind her, Arun Kumar (since deceased) came out of “Vandana Palace”. As per her version, after trading some distance, she heard sounds of gunshots. She turned around to see four persons firing bullets from the firearms held by them. She named those assailants as Deepak Paswan, Sanjay Paswan, Arvind Mahto (present applicant) and Amit Kumar. She stated that, in fact, deceased Arun Kumar was the sole eye witness in the case of murder of her husband Manoj Singh regarding which Crime No.86 of 2018 was registered on 09.04.2018. She stated that her Munshi Arun Kumar has been killed in her presence. She added that the assailants intended to kill her also.

8. Whether Vandana Singh is a witness of truth or not is a subject matter of trial. However, at this stage, she claims to be an eye witness, who has seen the incident after hearing the sounds of gunshots fired at deceased Arun Kumar.

9. Now, let us advert to the orders passed by the coordinate Benches of this Court directing release of rest of three co-accused on bail. At this juncture, it is apposite to quote the relevant paragraphs of **Judgment dated 19th April, 2022** in the matter of **Manisha Vs. The State of Rajasthan {Criminal**



Appeal No.649 of 2022 (arising out of SLP (Crl.) No.7893 of 2021} decided by the Bench of the Apex Court presided over by the Hon'ble the Chief Justice of India. Paragraphs-17 to 23 of the said Judgment can be quoted with advantage and those reads thus:

“17. Apart from the general observation that the facts and circumstances of the case have been taken into account, nowhere have the actual facts of the case been adverted to. There appears to be no reference to the factors that ultimately led the High Court to grant bail. In fact, no reasoning is apparent from the impugned order.

18. Reasoning is the life blood of the judicial system. That every order must be reasoned is one of the fundamental tenets of our system. An unreasoned order suffers the vice of arbitrariness. In *Puran v. Rambilas*, (2001) 6 SCC 338 this Court held as under:

8. Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. What the Additional Sessions Judge had done in the order dated 11-9-2000 was to discuss the merits and demerits of the evidence. That was what was deprecated. That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated. (emphasis supplied)



19. In Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528 this Court indicated the importance of reasoning in the matter concerning bail and held as follows:

11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind (emphasis supplied)

20. In Brij Nandan Jaiswal v. Munna, (2009) 1 SCC 678, which concerned a challenge to grant of bail in a serious offence, this Court has reiterated the same position as was observed in Kalyan Chandra Sarkar (supra). This Court has held as under:

12 However, we find from the order that no reasons were given by the learned Judge while granting the bail and it seems to have been granted almost mechanically without considering the pros and cons of the matter.

While granting bail, particularly in serious cases like murder some reasons justifying the grant are necessary. (emphasis supplied)

21. From the above, it is clear that this Court has



consistently upheld the necessity of reasoned bail orders, with a special emphasis on matters involving serious offences. In the present case, respondent no. 2 – accused has been accused of committing the grievous offence of rape against his young niece of nineteen years. The fact that the respondent no. 2 – accused is a habitual offender and nearly twenty cases registered against him has not even found mentioned in the impugned order. Further the High Court has failed to consider the influence that the respondent no. 2 –accused may have over the prosecutrix as an elder family member. The period of imprisonment, being only three months, is not of such a magnitude as to push the Court towards granting bail in an offence of this nature.

22. The impugned order passed by the High Court is cryptic, and does not suggest any application of mind. There is a recent trend of passing such orders granting or refusing to grant bail, where the Courts make a general observation that the facts and the circumstances have been considered. No specific reasons are indicated which precipitated the passing of the order by the Court.

23. Such a situation continues despite various judgments of this Court wherein this Court has disapproved of such a practice. In the case of Mahipal (supra) this Court observed as follows:

25. Merely recording having perused the



record and on the facts and circumstances of the case does not subserve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the Judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of Judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. Judges are duty-bound to explain the basis on which they have arrived at a conclusion. (emphasis supplied)”

Perusal of this law laid down by the Hon’ble Apex Court makes it clear that the Hon’ble Apex Court has depreciated the practice of granting bail by mentioning that it is granted “on consideration of facts and circumstances” without assigning any specific reasons by adverting the facts of the case.

10. Be that as it may, co-accused Sanjay Paswan is directed to be released on bail vide order dated 27.03.2019 passed by the coordinate Bench of this Court with the following reasons:

“Considering the fact that the FIR does not suggest that the informant is the eye witness to the occurrence and



the investigation already being concluded, let the above named petitioner be released on bail.....”

I have already pointed out that the first informant-brother has categorically stated that he is not an eye witness to the subject crime but he has received the information regarding murder of his brother Arun Kumar by some unknown persons. The offence alleged is punishable with imprisonment for life or death penalty.

11. Co-accused Amit Kumar has been granted anticipatory bail vide order dated 06.02.2020 by the coordinate Bench of this Court with the following reasons:

“Having considered the facts and the circumstances of the case, let the petitioner, above named, in the event of his arrest or surrender by him within six weeks from today, be enlarged on bail.....”

It is seen that the said order is passed only on noting the submission of the learned counsel for the applicant. Argument of the learned A.P.P. is not finding its place in that order.

12. Judgment of the Hon’ble Apex Court in the matter of **Manisha** (supra) is a complete answer as to why principle of parity is not applicable in such situation.

13. Co-accused Deepak Paswan @ Tenja Paswan is



directed to be released on bail by the coordinate Bench vide order dated 06.01.2022 with the following reasons:

“Considering the facts it has been submitted by learned counsel for the petitioner that charges have been framed and co-accused have been granted bail, the petitioner is directed to be released on bail.....”

These reasons for grant of bail to the co-accused are not finding their place in these orders. I have already adverted about the orders granting bail and pre-arrest bail to rest of the two co-accused and those constituted foundation for grant of bail to the co-accused Deepak Paswan @ Tenja Paswan. Benefit of such orders cannot be granted to the applicant on the principle of parity. Statement of Vandana Devi, who claims to be an eye witness to the subject crime is not adverted in any of the order granting bail or pre-arrest bail to the co-accused except noting the submissions in that regard made by the learned counsel for the applicant Amit Kumar.

14. It is seen that deceased Arun Kumar, who was serving as Munshi with deceased Manoj Singh, was the sole eye witness to the incident of murder of Manoj Singh for which Crime No.86 of 2018 was registered on 09.04.2018. He was done to death by firing bullets on 29.10.2018. His widow



Vandana Singh is apprehending that, in fact, the assailants had come to eliminate her. She is an eye witness to the subject crime. Grant of bail to the applicant may pose a threat to her life in this backdrop.

15. Nature of offence and the circumstances in which the same is committed constitute prime consideration for grant of bail. There is prima facie evidence regarding the offence punishable under Section 302 of the Indian Penal Code. The case in hand as such is not a fit case to exercise the discretion to release the applicant on bail despite the fact that three of the co-accused situated similarly are directed to be released on bail by the coordinate Benches of this Court.

16. Hence, application is rejected.

(A. M. Badar, J)

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