

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.38494 of 2021**

Arising Out of PS. Case No.-266 Year-2020 Thana- SUPAUL District- Supaul

Indrajeet Kamat, Son of Sri Suresh Kamat, Resident of Village- Balwa
Purnavas, Ward No.15, P.S.- Supaul, District- Supaul

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Amrit Abhijat, Advocate

For the Opposite Party/s : Mr.Mritunjay Kumar Nirala, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

2 31-01-2022 Heard Mr. Amrit Abhijat, learned counsel for the
petitioner and Mr. Mritunjay Kumar Nirala, learned A.P.P. for
the State.

Petitioner, in the present case, is seeking regular bail
in connection with Supaul P.S. Case No. 266 of 2020 registered
for the offences punishable under Section 386/144/149/341/323/
302/504 of the Indian Penal Code and 27 of the Arms Act. He
has no criminal antecedent and has remained in custody in
connection with this case since 27.01.2021.

Learned counsel for the petitioner submits that as per
the prosecution story the informant, who is brother of the
deceased, saw altogether ten named accused as well as some
unknown persons assaulting his brother (since deceased) with
Lathi, Danda and rod. The informant claims that while taking



his brother to the hospital the brother of the informant disclosed that on the dispute over a drainage the alleged occurrence took place and he specifically alleged that co-accused Binod Kamat had assaulted him by iron rod on the back side of his head as a result whereof he fell down.

Learned counsel further submits that the post-mortem report (Annexure '2') has disclosed that there was no scalp laceration but only hematoma on the right parietal region has been found. No other injury has been reported in the post-mortem report. This falsifies the general and omnibus allegation of the prosecution.

Learned counsel further submits that from the impugned order it would appear that similarly situated co-accused have been granted bail by learned coordinate Bench of this court in Cr. Misc. No. 41009/2020, but the petitioner was refused bail by learned IVth Additional District & Sessions Judge, Supaul only on the ground that those who were granted bail had stayed in jail for eleven months whereas the petitioner was in custody for only four months.

Learned counsel submits that in this pandemic period, the learned court below is not justified in keeping the petitioner in custody as a measure of punishment, even though the court



came to know that the co-accused similarly situated had been granted bail by Hon'ble High Court and there was no dispute on that.

Mr. Mritunjay Kumar Nirala, learned A.P.P. for the State has admitted at the bar that there are general and omnibus allegations against the petitioner and the co-accused Ranjeet Kamat and Vikash Kumar @ Anand have been granted bail by learned coordinate Bench of this court in Cr. Misc. No. 41009/2020. It is not controverted that the case of the petitioner stands on similar footing with the two co-accused who have been granted privilege of bail.

Having heard learned counsel for the petitioner and learned A.P.P. for the State, this court has noticed the uncontroverted submission of learned counsel for the petitioner. This Court has also perused the impugned order and finds substance in the submission of learned counsel for the petitioner that the only reason for which the petitioner was refused bail is that he had remained in custody for only about four months. To this court, this appears to be unfortunate that the learned court below even after finding that the co-accused similarly situated had been granted by learned coordinate Bench of this court and even otherwise on merit the allegations against the petitioner



were general and omnibus, thought it just and proper to refuse prayer for bail of the petitioner. This court is reminded of the judgment of the Hon'ble Supreme Court in the case of **Bhadresh Bipinbhai Sheth Vs State of Gujarat & Anr.** reported in **(2016) 1 SCC 152**. In the said case a charge of rape was framed against the accused who was seeking anticipatory bail. The Hon'ble Supreme Court did not go into the issue of framing of charge under Section 376 IPC on merit but considered the case for purpose of grant of anticipatory bail to the appellant. The High Court had cancelled the anticipatory bail of the appellant, therefore, the justification behind such cancellation was also an issue for consideration. The charge was added after a lapse of about nine years. After referring paragraph '26' from the judgment of the Hon'ble Apex Court in the case of **Shri Gurbaksh Singh Sibbia & Others v. State of Punjab**, reported in **(1980) 2 SCC 565**, their Lordships observed in paragraph '22' as under:-

“Though the Court observed that the principles which govern the grant of ordinary bail may not furnish an exact parallel to the right to anticipatory bail, still such principles have to be kept in mind, namely, the object of bail which is to secure the attendance of the accused at the trial, and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. The



Court has also to consider whether there is any possibility of the accused tampering with the evidence or influencing witnesses, etc. Once these tests are satisfied, bail should be granted to an undertrial which is also important as viewed from another angle, namely, an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. Thus, grant or non-grant of bail depends upon a variety of circumstances and the cumulative effect thereof enters into judicial verdict. The Court stresses that any single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.”

Following the aforementioned judgment of the Hon’ble Supreme Court, this Court can safely record that the rejection of the prayer for bail of the petitioner on the solitary ground that the petitioner had remained in custody only for 4 months whereas the co-accused were granted bail after their custody of 11 months is not in accordance with the first principles of criminal jurisprudence.

This Court is convinced that once the learned court below was unable to draw any distinction on merit between the case of the petitioner and those who had been granted bail, there would be no justification for keeping the petitioner in jail by refusing him equal privilege. This has resulted in not only unnecessary detention of the petitioner in judicial custody but has also burdened the system by compelling him to move this Court where his bail application has remained pending for more



than six months in the pandemic conditions.

Let the petitioner above named be released on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Supaul in connection with Supaul P.S. Case No. 266 of 2020, subject to the condition as laid down under Section 437 (3) Cr.P.C.

And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. 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.

Let a copy of this order be sent to the learned District and Sessions Judge, Supaul to bring it to the notice of learned Judicial Officers.

This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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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'.

