

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36159 of 2022

Arising Out of PS. Case No.-16 Year-2022 Thana- PUPRI District- Sitamarhi

MD. MAHFOOZ ALAM @ MD. MAHAFOOZ ALAM @ NANHE Son of
Late Mehmood Ali @ Saddi Resident of village - Awapur, P.S.- Pupri, District
- Sitamarhi

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Abu Nasar, Advocate
For the Opposite Party/s	:	Mr. Uday Pratap Singh, A.P.P.
For the Informant	:	Mr. Dwij Raj, Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 08-08-2022 Heard learned counsel for the petitioner, learned
counsel for the informant and learned A.P.P. for the State.

Let the defect(s), if any, be removed within a period
of four weeks.

The petitioner apprehends his arrest in a case
registered for the offences punishable under Sections 147, 148,
149, 341, 323, 307, 302/34 and 324 of the Indian Penal Code
read with Section 27 of the Arms Act.

Learned counsel for the petitioner submits that
petitioner has antecedent of two cases and in one case during the
investigation the Superintendent of Police has not found the
case to be true against the petitioner but still final form is to be
submitted.

The learned counsel for the petitioner submits that the



informant instituted the present F.I.R. against 19 named accused persons including the petitioner alleging that on account of electoral defeat of erstwhile Md. Mahfooz Alam (petitioner) and sister-in-law of Md. Abdulla in last panchayat election, the present occurrence took place. Further, the accused persons came at the door of the informant variously armed and assaulted the informant and injured him. It is alleged that the accused persons were searching for the brother of the informant, who was caught and on order of Md. Mahfooz Alam, the accused Md. Afroz inflicted knife blow on his stomach, Md. Shamim, Md. Sami and Md. Waris also assaulted by knife and lathi respectively and Md. Wajid resorted to firing and accused Md. Abdullah, thereafter, inflicted knife blow on the brother of the informant on his stomach. It is alleged that thereafter the named accused persons excluding the petitioner brought kerosene oil to burn the body of the deceased for wiping out the evidence, but on account of intervention of the villagers, they were saved and the accused fled away.

The learned counsel for the petitioner submits that from bare perusal of the allegation as alleged in the F.I.R., it would manifest that the informant with precision has given in detail that what arms was being carried by each of the accused



persons. It is next submitted that the allegation of assault is also specific as detailed in the F.I.R., but no overt act has been alleged against the present petitioner except that he caught the collar of the deceased and gave order to kill and was leading the accused persons. The learned counsel submits that it seems that the occurrence took place on account of electoral dispute in which several persons came to be implicated even without alleging any overt act against them.

The learned counsel, thus, submits that admittedly, the dispute arose on account of electoral politics in which, 19 accused persons came to be implicated and the informant very wisely and cunningly implicated innocent persons by alleging that they were members of the mob and were carrying lathi and as order givers but without specifically alleging any overt act against them.

The learned counsel next submits that the petitioner when became aware that he has been implicated falsely in the present case, he resorted to remedies available in law for availing the privilege of anticipatory bail. Accordingly, the petitioner moved before the learned Court below, but his anticipatory bail application came to be rejected on 06.06.2022 and, thereafter, the petitioner for obtaining the bail orders



moved before this Court. It is further submitted that after the anticipatory bail application of the petitioner came to be rejected, the process under Section 82 of the Cr.P.C. was issued on 21.06.2022, which presently is not in operation in view of the order dated 24.06.2022 in Cr. Misc. No. 16508 of 2022 and order dated 04.07.2022 passed in Cr. Revision No. 26 of 2022 passed by this Court and the learned Court below respectively.

The learned counsel next relies on an order dated 04.07.2022 in Cr. Misc. No. 38750 of 2021 to submit that mere issuance of process under Section 82 of the Cr.P.C. does not bar maintainability of an anticipatory bail. It is next submitted that the petitioner is similarly situated like co-accused Md. Amjad @ Md. Amjad Ali @ Mithu, who was granted anticipatory bail by order dated 14.06.2022 in Cr. Misc. No.19581 of 2022.

The learned counsel for the informant as well as learned A.P.P. opposed the anticipatory bail application. The learned counsel for the informant submits that no doubt, presently the process and the warrant were stayed, but then, the matter is still pending adjudication, hence, it cannot be construed that petitioner is not an absconder.

It is next submitted that the Hon'ble Supreme Court in the case of **Prem Shankar Prasad vs. The State of Bihar and**



another in **Criminal Appeal No. 1209 of 2021** has held that once process under Section 82 of the Cr.P.C. has been issued, then the accused is not entitled for anticipatory bail.

The learned counsel for the petitioner rebuts the submission made by the learned counsel for the informant and submits that it absolutely does not stand to reason that how such an argument could be made that once the process has been stayed still the accused is to be considered an absconder. It is next submitted that it appears that the learned counsel for the informant has not gone through the order passed by the Hon'ble Supreme Court in the case of **Prem Shankar Prasad** (supra) rather has cited the judgment like an Euclid Theorem without appreciating the facts of the case in its correct perspective. The Hon'ble Supreme Court in the said case has clearly recorded that the accused had moved for anticipatory bail after the process under Section 82 of the Cr.P.C. was issued.

Learned counsel for petitioner further submits that similarly situated co-accused have been granted anticipatory bail vide order dated 28.07.2022 passed in Cr. Misc. No. 37460 of 2022.

Considering the submissions made by the learned counsel for the petitioner, the petitioner above-named, in the



event of his arrest or surrender before the learned Court below within a period of six weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned court below where the case is pending/successor court in connection with Pupri P.S. Case No. 16 of 2022, subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

(Satyavrat Verma, J)

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