

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37460 of 2022

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

1. Jaseem Faizi @ Jaseem Faiz, Son Of Asoor Ahmad R/O- Vill- Awapur, P.S. Pupri, Dist.- Sitamarhi
2. Tasim Faizi, Son Of Asoor Ahmad R/O- Vill- Awapur, P.S. Pupri, Dist.- Sitamarhi
3. Wasim Faiz @ Waseem Faizi Asoor Ahmad, R/O- Vill- Awapur, P.S. Pupri, Dist.- Sitamarhi

... .. Petitioner/S

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Abu Nasar Mr. Md. Murad Ashraf Mr. Tarique Shamim
For the Opposite Party/s :		Mr. Amitesh Kumar Mr. Kumar Nikhil Mr. Dwij Raj Mr. Saurav Barial

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 28-07-2022 Heard learned counsel for the petitioners, learned counsel for the informant and learned APP for the State.

The petitioners seek bail in anticipation of their arrest in a case registered for the offences punishable under Sections 147, 148, 149, 341, 323, 307, 302, 34, 324 of the Indian Penal Code and Section 27 of the Arms Act.

The learned counsel for the petitioners submits that the petitioner nos.1 and 2 are persons with clean antecedent and petitioner no.3 has antecedent of two cases.



The learned counsel for the petitioners submits that the informant instituted the present F.I.R. against 17 named accused persons including the petitioners alleging that on account of electoral defeat of erstwhile Md. Mahfooz Alam 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 next alleged that the accused persons were searching for the brother of the informant, who was caught and on orders 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 next alleged that thereafter the named accused persons excluding the petitioners 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.

The learned counsel for the petitioners 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 petitioners except that they were also member of the mob and were carrying lathi. 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 next submits that petitioner nos.1 and 3 are government school/ madarsa teachers and petitioner no.2 is an engineer from North Eastern Hill University, Shillong. 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 member of the mob and were carrying lathi, but without specifically alleging any overt act.

The learned counsel next submits that the petitioners when became aware that they have been implicated falsely in the present case, they resorted to remedies available in law for availing the privilege of anticipatory bail. Accordingly, the petitioners moved before the learned Court below, but their



anticipatory bail application came to be rejected on 06.06.2022 and thereafter, the petitioners after obtaining the bail orders moved before this Court. It is further submitted that after the anticipatory bail application of the petitioners 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 petitioners are 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. opposes the bail application. The learned counsel for the informant submits that no doubt, presently the process and the warrant are stayed, but then, the matter is still pending adjudication, hence it cannot be construed that petitioners are not 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 petitioners 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.

Considering the submissions made by the learned counsel for the petitioners, the petitioners above-named, in the event of their arrest or surrender before the learned Court below within a period of six weeks, are directed to be released on bail



on their furnishing bail-bonds in the sum of Rs. 10,000/-
(Rupees Ten Thousand) each with two sureties of the like
amount each to the satisfaction of the learned Court below
where the case is pending in connection with Pupri P. S. Case
No.16 of 2022, subject to the conditions laid down under
Section 438(2) of the Cr.P.C.

The application stands allowed.

(Satyavrat Verma, J)

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