

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47640 of 2021

Arising Out of PS. Case No.-154 Year-2018 Thana- BIRAUL District- Darbhanga

MANTUN KUNWAR @ SHIB NARAIN KUNWAR S/o- Late Ram Lakhan
Kunwar R/V- Bhaini, P.S. - Biraul, District - Darbhanga.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar
For the State	:	Mr. Chandra Sen Prasad Singh
For the Informant	:	M/s Prem Kumar Jha & Rajesh Kumar Jha

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

5 01-08-2022 Heard learned counsel for the parties.

Petitioner apprehends his arrest in a case registered for the offence punishable under Section 302 of the Indian Penal Code.

As per the prosecution case, the daughter of informant was being tortured in her matrimonial house and in consequence thereof she was done to death due to no-fulfillment of demand of dowry.

Learned counsel appearing for the petitioner submits that petitioner is innocent and has falsely been implicated in the case. Petitioner is co-villager of the husband of deceased and police after investigation submitted final form against him however the court below after differing with the same took



cognizance against the petitioner. There is general and omnibus allegation against this petitioner and he has got no concern with the family affairs of the deceased or her husband. Petitioner claims clean antecedent.

Learned counsel appearing for the informant opposes the prayer for anticipatory bail and submits that petitioner is full brother of father-in-law of the deceased and there is direct and specific allegation against him of demanding dowry and committing the murder of the deceased. He further submits that processes u/s 82/ 83 of the Cr. P. C. has already been issued against the petitioner and anticipatory bail petition of similarly situated two accused has already rejected by a co-ordinate Bench of this court vide order dated 22.01.2019 passed in Cr. Misc. No. 68949/ 2018. It is next submitted that petitioner has been declared proclaimed offender by the court below and in the light of judgement of the Supreme Court in the case of ***Lavesh vs. State (NCT of Delhi reported in 2012(8) SCC 730*** when accused is absconding and declared as proclaimed offender, there is no question of granting anticipatory bail. Similarly in the light of aforesaid judgement again the Supreme Court adopted same approach in the case of ***State of Madhya Pradesh vs. Pradeep Sharma*** reported in ***2014(2) SCC 172*** by holding



that “it is relevant to point out that both the accused are facing prosecution for offences punishable u/s 302 and 120(B)/34 of the IPC. In such serious offences, particularly, the respondent/ accused being proclaimed offenders, we are unable to sustain the impugned orders of granting anticipatory bail. The High Court failed to appreciate that it is a settled position of law that where the accused has been declared as an absconder he has not cooperated with the investigation he should not be granted anticipatory bail”.

However, learned counsel for the petitioner submits that so far similarly situated two other accused are concerned, police after investigation submitted charge sheet against them whereas final form was submitted against this petitioner. It is further submitted that process u/s 82/83 of the Cr.P.C. has been issued against the petitioner after filing of the present petition.

Considering the facts of the case, petitioner being not family member of the deceased, final form has been submitted against him and clean antecedent of the petitioner, let the petitioner, above named, in the event of his arrest/ surrender within a period of six weeks from today shall be enlarged on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of Additional Chief Judicial Magistrate-I, Biraul, Darbhanga in connection with Biraul PS



case No. 154/ 2018, subject to conditions laid down u/s 438(2)
of the Cr. P. C.

(Prabhat Kumar Singh, J)

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