

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58817 of 2021

Arising Out of PS. Case No.-120 Year-2020 Thana- MALSALAMI District- Patna

Vijay Kumar Yadav @ Vijay Rai @ Vijay Ray Son Of Pitambar Rai Resident
Of Village - Sukumarpur, P.S.- Raghapur, Dist.- Vaishali.

... .. Petitioner/S

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma- Sr. Advocate
		Mr. Sanjay Kumar- Advocate
For the Opposite Party/s :		Mr. Anuj Kumar Shrivastava- A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 11-07-2022 Heard learned senior counsel for the petitioner and
learned APP for the State.

The petitioner seeks bail in anticipation of his arrest in
a case registered for the offences punishable under Sections 147,
148, 149, 323, 324, 307, 504, 364, 302 and 201 of the Indian
Penal Code.

The learned senior counsel for the petitioner submits
that the petitioner is a person with clean antecedent and the
informant alleges that on 17.04.2020, he had come to meet his
maternal brother Raju Kumar at Malsalami when at 10.45 P.M.,
Vijay Rai, Anil Rai, Sunil Rai, son of Vijay Rai, Uday Rai, Sunil
Rai, son of Khuddi Rai, Ranjit Rai, Bablu Rai, Ballabh Rai
along with 6-8 unknown accused came variously armed and



started abusing and assaulting. It is next alleged that the informant was assaulted by a Dabiya on his head causing injury. Thereafter, it is alleged that accused persons assaulted Raju Kumar and his mother and father by khanti and stones and took them towards river Ganga. It is next alleged that informant somehow managed to save his life and fled or else, he would have been killed. It is next alleged that Raju Kumar must have been thrown in the river Ganga. It is next alleged that informant is not aware where the parents of Raju Kumar went.

The learned senior counsel for the petitioner submits that from bare perusal of the allegation as alleged in the F.I.R., it would manifest that the allegation appears to be inherently improbable and patently absurd. It is next submitted that it absolutely does not stand to reason that if the informant was known to the accused persons including the petitioner, then why the accused persons left the informant and thus, created evidence against themselves i.e. by committing an occurrence in his presence. It is next submitted that even the allegation of assault is general and omnibus in nature. It is further submitted that the informant in the F.I.R. initially alleges that accused persons forcibly took Raju Kumar and his parents towards river Ganga, but in the last line alleges that he is not aware that where



the parents of Raju Kumar went. Thus, it is submitted that allegation in the F.I.R. does not inspire confidence. It is next submitted that brother of this petitioner Uday Rai was contesting the election of Mukhiya and the petitioner was contesting the election of PACS and as such, the present false case came to be instituted.

The learned senior counsel next asserts and submits that the informant is not the maternal brother of Raju Kumar rather he is not related to Raju Kumar at all as it has been pleaded in Para-7 of the anticipatory bail application. It is next submitted that the entire family including the sons of the petitioner namely, Anil Rai and Sunil Rai, who are students and studying in Resonance Coaching at Kota, Rajasthan and are preparing for engineering entrance examination have also been implicated.

Learned A.P.P. opposes the bail application and submits that process under Section 82 and 83 of the Cr.P.C. have already been issued, as such, the present anticipatory bail application is not maintainable.

The learned senior counsel for the petitioner rebuts the submission of the learned A.P.P. and relies on an order dated 04.07.2022 in Cr. Misc. No.38750 of 2021 (Santosh Yadav @



Santosh Kumar Yadav vs. the State of Bihar) to submit that the maintainability of anticipatory bail application based on issuance of process under Sections 82 and 83 of the Cr.P.C. is never in question. The anticipatory bail application is maintainable though the accused by virtue of his conduct may not be entitled to the privilege of anticipatory bail. It is next submitted that the process under Sections 82 and 83 of the Cr.P.C. though was issued, but was issued in complete breach of the provisions as contained in the aforesaid sections as non-bailable warrant was issued on 20.04.2020, process under Section 82 of the Cr.P.C. was issued on 24.04.2020 and process under Section 83 of the Cr.P.C. was issued on 28.04.2020. Thus, within a span of eight days, all the process were completed in complete breach of the rules itself.

The learned senior counsel thereafter relies on an order dated 09.08.2021 in Cr. Misc. No.4152 of 2021 (Uday Rai @ Uday Ray @ Mukhiya Ji vs. the State of Bihar) to submit that similarly situated co-accused has been granted the privilege of anticipatory bail.

Considering the submissions made by the learned senior 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, is directed to be released on bail on his furnishing bail-bonds in the sum 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 in connection with Malsalami P. S. Case No.120 of 2020, subject to the conditions laid down under Section 438(2) of the Cr.P.C.

However, it is made clear that the petitioner will cooperate in the investigation and will appear before the police as and when required.

The application stands allowed.

(Satyavrat Verma, J)

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