

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17301 of 2023

Arising Out of PS. Case No.-234 Year-2022 Thana- CHAINPUR District- Kaimur (Bhabua)

Arman Khan @ Laddu Khan, aged about 20 Years, Male, Son Of Asaraf
Khan R/V- Bari Takiya, P.S- Chainpur, Dist- Kaimur, at Bhabhua

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Shailesh Kumar, Advocate

For the Opposite Party/s : Ms.Nirmala Kumari, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

3 25-05-2023 1. At first, the matter is heard in respect of defect no.6(1) pointed out by the office and the same relates to detection of petitioner's earlier movement for anticipatory bail and accordingly as per office report the paragraph no.2 of the petition needs rectification.

2. In the light of the said defect, learned counsel for the petitioner submits that necessary details of the petitioner's anticipatory bail prayer made through Cr. Misc. No.5636 of 2023 has been given in the paragraph no.2 of his petition and it has been mentioned that the petitioner had preferred the said criminal miscellaneous case but after his arrest, the same has now become infructuous and the same will be withdrawn, though in this regard application for withdrawal has been made after the filing of the present criminal miscellaneous petition in



which the relief for regular bail has been prayed but merely by the said fact, the instant petition cannot be deemed to be not maintainable in view of the principle laid down by this Court in **Cr. Misc. No.21360 of 2015 (Md. Matin & Ors. vs. the State of Bihar)** which was followed in **Cr. Misc. No.19874 of 2020 (Rahul Kumar @ Rahul Raj vs. the State of Bihar)** and such defect, of which removal is mere a formality, should be ignored particularly when there is huge pendency of bail prayer.

3. Heard learned counsel for the petitioner in respect of the office note, as discussed above, and perused the above-mentioned orders of this Court, referred by learned counsel for the petitioner. In the case of Cr. Misc. No.21360 of 2015 vide order dated 26.05.2015, this Court laid down the following principle which is as under:-

“Learned counsel for the petitioners states that petitioner no.1-Md. Matin has been arrested during pendency of this application and as such he seeks leave to withdraw this application in so far as petitioner no.1 is concerned. He states that the lower court is not ready to hear the regular bail application of this petitioner on the ground that anticipatory bail application is pending in the High Court.

I have yet to see a more absurd prayer. Upon arrest of a person all proceedings in relation to anticipatory bail becomes infructuous and no Magistrate could ever make such an observation.

In any view of the matter, in view of the



prayer made, the application on behalf of petitioner no.1-Md. Matin is deemed to be infructuous and disposed of as such."

4. The above-mentioned principle was followed by the co-ordinate Bench of this Court in Cr. Misc. No.19874 of 2020. Though the principle laid down in both the said criminal miscellaneous cases was in respect of the bail matters filed before the courts of District Judiciary but I am of the considered view that the said principle should also be applied to this Court as after making a prayer for anticipatory bail by way of criminal miscellaneous petition, if such petitioner is arrested then all the proceedings relating to such anticipatory bail comes to an end just from the moment of his arrest and withdrawal of such prayer becomes a mere formality and this formality should not be strictly applied in every case, particularly when there is a huge pendency of criminal miscellaneous petitions of bail in this Court as some delay may occur in deciding such prayer for withdrawal of anticipatory bail and such delay will deprive one from his constitutional legal right of speedy disposal of his prayer for regular bail. Accordingly, I find force in the above-mentioned submissions made by learned counsel for the petitioner, hence defect No.6(1) pointed out by the office is hereby ignored.

5. Further, learned counsels for the parties are heard



on the merit of this case.

6. Petitioner seeks regular bail in connection with Chainpur P.S. Case No. 234 of 2022 dated 18.09.2022 registered for the offence(s) punishable under Section(s) 341, 323, 307, 504, 506, 364 and 511 of the Indian Penal Code and 27 of the Arms Act.

7. As per prosecution, the informant alleged that this petitioner along with other accused persons abused and assaulted the informant and thereafter one co-accused namely Shaheb Jama Khan @ Pathan opened fire at him which hit him at his left leg.

8. The main submissions advanced by the learned counsel for the petitioner are that there is a case and counter-case in between both the parties and petitioner's case was lodged prior to institution of the present matter and main allegation is against co-accused Shaheb Jama Khan @ Pathan who has been granted bail by a co-ordinate Bench of this Court vide order passed in Cr. Misc. No.4172 of 2023 and rest co-accused persons, namely, Saddam Khan, Danish Khan and Alamgir Khan @ Alamgeer Khan have been granted anticipatory bail by a co-ordinate Bench of this Court vide order passed in Cr. Misc. No.5636 of 2023 and the petitioner



was also one of the petitioners in the said criminal miscellaneous petition but as he had been arrested before deciding the said petition, so his prayer became infructuous and he had to withdraw his prayer. Further submissions are that there is no serious allegation against this petitioner and he is simply alleged to have instigated the above co-accused persons to commit the alleged occurrence and in the present matter, only one person, who is the informant himself, is stated to have sustained firearm injury and he sustained the said injury on non-vital part of his body and petitioner is not alleged to have fired at the informant. Further submissions are that the petitioner has been languishing in jail since 13.01.2023 and against him, the investigation has been completed and against him, there is criminal antecedent of one case in which he is on bail.

9. Learned APP appearing for the State opposes the bail prayer.

10. Considering the above submissions and mainly the facts that co-accused Shaheb Jama Khan @ Pathan, who is carrying more serious allegation than this petitioner, is on bail and some other co-accused persons, as mentioned-above, carrying almost similar nature of allegation, have been granted anticipatory bail by a co-ordinate Bench of this Court and



against the petitioner, there is simple allegation of having instigated and helped the other co-accused persons to commit the alleged occurrence and during the occurrence he slapped the victim and dragged him towards the vehicle and also taking into account the completion of investigation against him, in my opinion, it is a fit case for bail to the petitioner. Accordingly, let the petitioner named-above be enlarged on bail in connection with Chainpur P.S. Case No. 234 of 2022 on furnishing bail bond of Rs.10,000/-(Ten Thousand) with two sureties of the like amount each to the satisfaction of the Court concerned.

(Shailendra Singh, J)

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