

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1925 of 2023

Arising Out of PS. Case No.-523 Year-2021 Thana- BARH District- Patna

Mukesh Singh Son Of Late Laxmi Singh Resident Of Village- Pandarkh, Ps-
Pandarakh, Distt- Patna

... .. Appellant/s

Versus

1. The State of Bihar
2. Dharam Raj son of Krishanmohan Prasad resident of village- Gopkita, P.S.-
Pandarakh

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Akash Shankar
For the Respondent/s : Mr. Sadanand Paswan

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV ORDER

5 27-09-2023 Heard learned counsel for the appellant, learned
Special Public Prosecutor for the State and learned counsel for
the respondent no. 2.

2. This is an appeal under Section 14 A (2) of the
Scheduled Castes and Scheduled Tribes (Prevention of
Atrocities) Act, 1989 (hereinafter in short referred to as the
SC/ST Act), against the refusal of prayer of anticipatory bail
vide order dated 25.02.2022 passed by learned A.D.J.-V, Barh,
Patna, in connection with Barh P.S. Case No. 523 of 2021
(Special Case No. 16/2022), registered under Sections 307, 302,
120B, 34 of the Indian Penal Code and Section 27 of the Arms
Act and subsequently added Section 3(i)(v) of the Scheduled



Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. As per the prosecution case, eight named accused persons including this appellant and 2 to 3 unknown persons sitting outside the hall fired upon the brother of the informant, Rajesh Kumar (A.S.I.) and Sarpanch Lal Bahadur. The attack through fire arms by a person namely co-accused, Kanhaiya Singh, caused injury to the legs of a person namely Lal Bahadur. The co-accused, namely, Rakesh @ Dablu Singh and Vikash Singh have fired from their respective firearms on the Rajesh Kumar, which caused injury in the both of his legs. The informant's brother namely, Priyaranjan Kumar @ Gorelal Yadav and Rajesh Kumar have been declared dead during the medical treatment. The injured person, namely, Lal Bahadur is under medical treatment. It is further alleged that the incident in question has been done on the direction of the present petitioner, Mukesh Singh with others named in the F.I.R.. It is also alleged that the petitioner along with Udaynarayan Sharma had threatened the informant two days back and have said that his brother is a guest of few more days and has been killed before taking the oath ceremony of Mukhiya and the incident has occurred due to political enmity during the panchayat/local body election where the daughter-in-law of Udaynarayan Sharma has



been defeated by the informant's brother namely, Priyaranjan (deceased) on the post of Mukhiya.

4. Learned counsel for the appellant submits that the appellant is innocent and has falsely been implicated in the present case. The appellant has got seven criminal antecedent as mentioned in para-3 of the memo of the appeal. When the respondent no. 2 objected that the appellant have more criminal antecedents, then by way of supplementary affidavit he disclosed that the appellant has more five criminal antecedents i.e. total 12 criminal antecedents against the appellant. He submits that earlier the appellant has filed anticipatory bail application before this Hon'ble High Court, but during the investigation SC/ST Act was added, thereafter, the same was withdrawn by order dated 17.11.2022 and a fresh anticipatory bail application was being filed under Section 14A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act but not moved before Special Court of the SC/ST Act. He further submits that there is no allegation against the appellant of firing upon the deceased, at best the appellant is only conspirator. He further submits that there is no evidence against the appellant. He also submits that process u/s 82 and 83 of the Cr.P.C., has been issued on 23.12.2021 and completed on



21.08.2022 against the appellant, on the mere bald statement of the Investigating Officer and in the routine and casual approach of the Investigating Officer against the appellant without any application of mind. He fairly submits that when the process u/s 83 of Cr.P.C. was completed, no any bail application is pending against the petitioner either in the Court below or in this Court.

5. Learned counsel for the appellant relies on the judgment of Hon'ble Apex Court passed in the case of ***Sanjay Chandra V/S CBI***, reported in ***(2012) 1 SCC 40***, in which the Court has held that the purpose of sections 438, 439 and 437 is to release the applicant on bail and the purpose is not to detain an accused for the purposes of giving him a taste of conviction prior to the conviction of the court of competent jurisdiction. He further relies upon the judgment of Hon'ble Apex Court passed in the case of ***Siddaram Satlingappa Mhetre V State of Maharstra*** reported in ***(2011) 1 SCC 694***, in which the Hon'ble Apex Court has held that:

“113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly



attributed to the accused and these allegations are corroborated by other materials and circumstances on the record.

116. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.”

6. He further relied on the judgment of Hon’ble Apex Court passed in the case of ***Gudikanti Narasimhulu V/s. Public Prosecutor***, High Court of Andra Pradesh reported in ***(1978) 1 SCC 240*** in which it was observed that the issue of bail is one of liberty, justice, public safety, and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. After all, the personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law. The last four words of Article 21 are the life of that human right.

7. He further submits that the right of life and Personal Liberty is a sacrosanct Fundamental Right as envisaged in Article 21 of the Constitution of India and liberty of a person cannot be curtailed except in accordance with the procedure established by law and definitely not by giving restrictive interpretation of s statute. it is also relevant to mention here that the section 438 of Cr.P.C was incorporated in the Cr.P.C in pursuance of the report of 41st Law Commission and it is an embodiment of Article 21 of the Constitution of India and mere abscondence is not the sole criteria to deny the valuable right of personal freedom of an individual more so



when the provision of section 82 and 83 Cr.P.C are provisional in nature and in this regard the definition of absconder and judgment of *Sunil Clifford Daniel Vs State of Punjab* reported in *(2012) 11 SCC 205* would be necessary to observe.

8. He further relies upon the Judgment of Hon'ble Apex Court in the case of *Bharat Chaudhary and another vs State of Bihar and another* reported in *(2003) 8 SCC 77* is also relevant to observe where it has been held that even after taking cognizance of case by trial court or after filing of charge-sheet by police, a person can move an application for anticipatory bail under section 438 of Cr.P.C, as Section 438 of Cr.P.C nowhere prohibits the court concerned from granting anticipatory bail in an appropriate case even the Hon'ble Supreme Court held that the anticipatory bail can be granted at anytime so long as the applicant has not been arrested as held in the case of *Ravindra Saxena vs State of Rajasthan* reported in *(2010) 1 SCC 684* thus it can be submitted that in view of the judgments aforesaid it can be safely construed that maintainability of an application under Section 438 Cr.P.C. does not lie at the mercy of an Investigating Officer or any other consideration including provisions of Cr.P.C.

9. He further relies on the judgment of Hon'ble Supreme Court passed in the case of *Shushila Agarwal and others V State (NCT of Delhi) and another* reported in *(2020) 5 SCC 1*, where the Apex court held that the requirement of investigating agency under Section 27 of evidence, met by the concept of deemed custody when accused is on anticipatory bail and it is open to the police or investigating agency to move the court concerned, which grants anticipatory bail, for a direction under 439(2) Cr.P.C to arrest the accused, in event of a violation



of any term, such as absconscion, non-cooperation during the investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial etc.

10. He further submits that Apex court has delivered a series of judgments curtailing the power of arrest, culminating in a definitive statement of law in *Satender Kumar Antil's* case on July 11,(2022) and a thumping order in *Mohammed Zubair's* case on July 20, 2022 and in 2014, in *Arnesh Kumar's* case Apex Court noted that the power of arrest is largely considered as a tool of harassment and, oppression and surely not considered a friend of public and needless to mention here that arrest brings humiliation and curtails freedom and casts scars forever and the arrest must be avoided unless it is necessary. He lastly relies on the judgment of Hon'ble Apex Court passed in the case of *Prabhakar Tiwary vs. State of U.P.* reported in *(2020)11 SCC 648*, to submits that the criminal antecedent cannot be sole basis for rejecting bail application of an accused.

11. Learned Spl. PP for the State and learned counsel for the respondent no. 2 opposed payer for bail and submitted that earlier the appellant has suppressed criminal antecedents, later on when the objection raised by the respondent no. 2, then by way of supplementary affidavit appellant disclosed the other criminal antecedents.

12. Learned counsel for the respondent no. 2 submits that it is a case wherein a First Information Report was



registered mentioning that eight persons came on three motorcycles and opened fire which injured the brother of the informant, later on he succumbed to the injuries and died. The informant has mentioned the name of some of the persons who used fire arm and also mentions about the unknown persons who also fired. He further submits that in such case where there was unknown persons and the police is conducting investigation, the investigating authorities should be left free to conduct a free and fair interrogation and for the said purpose they may arrest the person whose name figures during investigation. It appears that the name of the appellant has been cropped during investigation and he has been also doubted to be one of the persons who were participating in the said incident. He further submits that the appellant is a notorious criminal and many cases were pending against the appellant under Section 302 and other Sections of the Indian Penal Code. He also submits that there is enough evidence to show the complicity of the appellant and further, based on this very order, other co-accused persons have been granted the benefit of anticipatory bail, which does not serve larger public interest.

13. Learned counsel for the respondent no. 2 relies upon the judgment of Hon'ble Apex Court passed in *SLP (Crl.) No. 2256/2022*, in *State of Haryana vs. Dharamraj* and submits



that in the background of the nature of the allegations and the materials collected as well as the respondent having been declared a proclaimed offender, grant of indulgence under Section 438 of the Code of Criminal Procedure was erroneous and misplaced.

14. Having regard to the facts and circumstances of the case, arguments of the parties, perusal of the records including the case diary and in the opinion of this Court whether the petitioner may have criminal antecedent or not immaterial but in the opinion of the Court granting anticipatory bail to such a person is not called for as custodial interrogation may also be required. More so he has a history of criminal cases against him out of which two cases are pending. The judgment passed by Hon'ble Supreme Court in ***Prabhakar Tiwary*** (supra) is on different facts, which do not apply in the present anticipatory bail application. Learned counsel for the appellant relied on various judgments of the Hon'ble Supreme Court, which is not applicable in the present case. One fact also emerge in the present case that after withdrawing the anticipatory bail application when he know this fact that SC/ST act was added, he had not moved before the Court below and directly filed the present appeal for anticipatory bail application. In my opinion, the appellant should first move before the learned Court below then he move to this Court.



15. Considering the facts and circumstance of the case, the nature of the offence and the evidence collected by the Investigating Officer in the case diary, I am not inclined to enlarge the appellant on anticipatory bail. The prayer for anticipatory bail of the appellant is hereby rejected.

(Anjani Kumar Sharan, J)

anand/-

U		T	
---	--	---	--

