

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36710 of 2023

Arising Out of PS. Case No.-57 Year-2021 Thana- MALAYPUR District- Jamui

Basudeo Nayak @ Basudev Nayak S/O Tulsi Prasad Nayak, R/O Village-
Raja Tand, Angwali, P.S- Patarwar, Distt.- Bokaro.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance:

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

For the Opposite Party/s : Mr. Pradeep Narain Kumar, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
ORAL ORDER

2 31-07-2023 This application is filed under Section 438 of Code of Criminal Procedure, 1973 for enlarging the applicant on anticipatory bail in connection with Malaypur P.S. Case No.57 of 2021 dated 09.04.2021, G.R. No. 1043 of 2021, registered for the offences punishable under Sections 272, 273 and 34 of the Indian Penal Code and 30(a), 36 and 41(1) of the Bihar Prohibition & Excise Act, 2018.

2. Heard Dipak Kumar, the learned advocate for the applicant and Pradeep Narain Kumar, the learned APP for respondent-State.

3. Learned advocate for the applicant submits that the nature of allegations are such for which custodial interrogation at this stage is not necessary. He further submits that the applicant will keep himself available during the course

of investigation, trial also and will not flee from justice.

4. Learned advocate for the applicant on instructions states that the applicant is ready and willing to abide by all the conditions including imposition of conditions with regard to powers of Investigating Agency to file an application before the competent Court for his remand. He further submits that upon filing of such application by the Investigating Agency, the right of applicant accused to oppose such application on merits may be kept open. Learned advocate, therefore, submitted that considering the above facts, the applicant may be granted anticipatory bail.

5. Learned Additional Public Prosecutor appearing on behalf of the respondent-State has opposed grant of anticipatory bail looking to the nature and gravity of the offence.

6. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, at this stage, I am inclined to grant anticipatory bail to the applicant.

7. This Court has considered following aspects:

(i) applicant has been implicated on the basis of

the statement of the co-accused, who is the driver of the vehicle in question;

(ii) two other co-accused against whom similar type of allegations are levelled have been granted anticipatory bail by a co-ordinate Bench of this Court vide orders dated 13.10.2022 and 05.08.2022 passed in Cr. Misc. No. 41472 of 2022 and Cr. Misc. No. 15341 of 2022 respectively, copies of the said orders are placed on pg. no. 26 and 28 of the compilation;

(iii) the liquor in question has not been found from the conscious possession of the applicant.

8. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors.**, reported at (2011) 1 SCC 694, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of **Shri Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab**, reported at (1980) 2 SCC 565.

9. Accordingly, the applicant, named above, is ordered to be released on bail in the event of his arrest in connection with Malaypur P.S. Case No.57 of 2021, on his executing a personal bond of Rs.10,000/- (Rupees Ten Thousand

Only) with one surety of like amount to the satisfaction of learned Special Exclusive Excise Court-I, Jamui on the following conditions:

(a) shall cooperate with the investigation and make himself available for interrogation, whenever required;

(b) shall remain present at concerned Police Station on 21st August, 2023 between 11:00 AM and 02:00 PM;

(c) shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

(d) shall not obstruct or hamper the police investigation and not play mischief with the evidence collected or yet to be collected by the police;

(e) shall not leave India without the permission of the concerned trial court and, if having passport, shall deposit the same before the concerned trial court within a week; and

(f) it would be open to the Investigating Officer to file an application for remand if he considers it proper and just and the competent Court would decide it on merits;

10. Despite this order, it would be open for the Investigating Agency to apply to the competent Court, for police

remand of applicant. The applicant shall remain present before the competent Court on the first date of hearing of such application and on all subsequent occasions, as may be directed by the competent Court. This would be sufficient to treat the accused in the judicial custody for the purpose of entertaining application of the prosecution for police remand. This is, however, without prejudice to the right of the accused to seek stay against an order of remand, if, ultimately, granted, and the power of the competent Court to consider such a request in accordance with law. It is clarified that the applicant, even if, remanded to the police custody, upon completion of such period of police remand, shall be set free immediately, subject to other conditions of this anticipatory bail order.

11. At the trial, the concerned trial court shall not be influenced by the *prima facie* observations made by this Court in the present order.

12. This application is, accordingly, allowed.

(Vipul M. Pancholi, J)

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