

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37887 of 2023

Arising Out of PS. Case No.-90 Year-2023 Thana- RAMPUR District- Gaya

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Md. Zubair @ Md. Zubair Alam @ Zubair Alam Son of Md. Mansoor, R/o
-Mohalla Neem Dargah Gali, Panchaitiya Akhara, PS- Kotwali, District-
Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance:

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

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

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

2 02-08-2023 This application is filed under Section 438 of Code
of Criminal Procedure, 1973 for enlarging the applicant on
anticipatory bail in connection with Rampur P.S. Case No. 90 of
2023, dated 01.02.2023, registered for the offences punishable
under Sections 406 and 420 of the Indian Penal Code and
Section 138 of the Negotiable Instrument Act.

2. Heard Mr. Shailesh Kumar, the learned advocate
for the applicant and Mr. Yogendra 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) it is submitted that the dispute is between the

complainant and co-accused Anwar Karim, the document was executed between the said two persons wherein the applicant is not even a signatory;

(ii) it is also submitted that applicant has not issued any cheque to the complainant;

(iii) it is further submitted that the applicant was merely present at the time when the complainant visited the place of the co-accused Anwar Karim, thus, he has been falsely implicated;

(iv) applicant has no criminal antecedent.

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 Rampur P.S. Case No. 90 of 2023, 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 Judicial Magistrate, 1st, Class, Gaya, 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 23rd 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 the 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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