

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38363 of 2023

Arising Out of PS. Case No.-37 Year-2016 Thana- CHAUTHAM District- Khagaria

Shankar Ray Son Of Late Bhumi Ray Resident Of Pirangara Ps Beldour
District Khagaria

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Santosh Kumar Singh, Advocate

For the Opposite Party/s : Mr.Prem Kumar Jha, Addl Public Prosecutor

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

- 3 11-08-2023 Heard learned counsel for the petitioner and the State.
2. As per the FIR, on a secret information, a vehicle was intercepted, petitioner and other co-accused persons were apprehended on the allegation of transporting stolen cattle and treating the cattle with cruelty. Petitioner and other co-accused persons were apprehended under Sections 414/34 of the Indian Penal Code and Sections 11(A)(D) of Prevention of Animal Cruelty Act. However, petitioner was given benefit of Section 41(1) of the Code of Criminal Procedure and had been released on bail.
3. While hearing the present bail petition, a bench of this Court vide previous order dated 28.7.2023 observed that ‘It seems that the petitioner and other co-accused persons were arrested and thereafter released by the police in non-bailable offence. Under these circumstances, the anticipatory bail petition will not be maintainable,’ and hence State counsel was directed to file counter affidavit in the matter.
4. Pursuant to the said direction, State has filed



counter affidavit. It has been stated that the petitioner had been granted police bail on the disclosure that the petitioner is infected with AIDS. But suppressing this fact, the petitioner has filed this bail petition seeking pre-arrest bail, which is not fair.

5. However, learned counsel further submits that once the benefit of Section 41 of the Cr.P.C. is granted, then in that event also, anticipatory bail would be maintainable as held by this Court in the case of **Gauri Shankar Roy vs. the State of Bihar** reported in **2015(3) P.L.J.R. 618**. It is further submitted that petitioner never misused the privilege of police bail, but now cognizance has been taken, as such, he apprehends his arrest.

6. Seeking pre-arrest bail, learned counsel for the petitioner submits that the no cheat of peper has been produced by the police in support of the allegation that seized cattle were stolen, as such, no offence under section 414 IPC is made out against him. Moreover, petitioner is neither owner of the vehicle nor the cattle seized with the vehicle and he was merely a co-passenger. Now, police has submitted charge sheet against all the five accused persons including the petitioner and the Court below has also taken cognizance of the case against the petitioner. Petitioner does not controvert the assertion of learned counsel for the State to the effect that the petitioner is infected with AIDS virus. Petitioner claims clean antecedent.

7. Considering the aforesaid facts of the case, prayer for bail of the petitioner is allowed. In the event of arrest/surrender within six weeks from today, let the petitioner, mentioned above, be enlarged on bail on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of Chief Judicial Magistrate, Khagaria in



Chautham Police Station Case No. 37 of 2016, subject to the conditions laid down under section 438(2) of the Code of Criminal Procedure.

(Prabhat Kumar Singh, J)

Shashi

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

