

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44828 of 2023

Arising Out of PS. Case No.-74 Year-2023 Thana- MOUZAHDIPUR District- Bhagalpur

Md. Sabir @ Md. Sabir Khan S/O Late Md. Salimullah R/O Mohalla-
Maulanachak, PS. Mojahidpur, Dist. Bhagalpur

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner	:	Mr. Shashank Chandra, Advocate Md. Najmul Hodda, Advocate Mr. Shashank Shekhar, Advocate Mr. Ashutosh Kumar, Advocate
For the State	:	Mr. Akhileshwar Dayal, APP
For the Informant	:	Mr. I.P. Mandal, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 11-10-2023 Heard learned counsel for the petitioner, learned
counsel for the informant and learned APP for the State.

2. The petitioner in the present case is seeking pre-arrest bail in connection with Mojahidpur P.S. Case No. 74 of 2023 registered for the offences punishable under Sections 307, 120(B), 34 of the Indian Penal Code and Section 27 of the Arms Act, later on Section 302 of the Indian Penal Code and Section 25(1-b)a of the Arms Act were also added. He was earlier involved in one case as stated in paragraph '3' at the instance of the present prosecution party but after investigation, police has submitted a final form.

3. As per the prosecution story, the informant alleged that on 22.02.2023 at about 05:30 P.M., co-accused Md. Afsar,



Md. Adnan and Md. Afroz @ Kallu shot at her son-in-law, namely, Imran @ Kallu and fled away. It is alleged that co-accused Md. Sabir (petitioner) (former ward member), his nephew, namely, Sonu and Sikander were also involved in this occurrence on account of dispute relating to ward election. It is further alleged that co-accused Rahmat Kuraishi, Shahjahan @ Pasha, Md. Aftab and Md. Saddam had earlier fired on the son-in-law of the informant. The informant also alleged that Md. Istiyak, Md. Guddu and Fulwali Rani were also involved in the said alleged occurrence.

4. Learned counsel for the petitioner submits that from a bare reading of the first information report, it would appear that the petitioner has been named in this case on mere suspicion alleging that this petitioner (former ward member) had an enmity with the deceased.

5. Learned counsel submits that it is not only the petitioner, one Rahmat Kuraishi and some others have also been named in the FIR as conspirators.

6. It is submitted that in course of investigation, it has come that the deceased had helped the wife of Abdul Sarwar Kuraishi @ Mintu against the wife of this petitioner in Panchayat election, wife of Kuraishi @ Mintu had won the



election but thereafter Kuraishi @ Mintu was not happy with the manner in which people had started recognizing the deceased.

7. It is submitted that in course of investigation, the named accused Md. Afsar was arrested and he made a statement in which he has stated that on the asking of one Guddu @ Sarfaraz who was speaking for and on behalf of co-accused Abdul Sarwar Kuraishi @ Mintu, he had agreed to eliminate Imran @ Kallu. Learned counsel, therefore, submits that in the case diary the name of Kuraishi @ Mintu has transpired as the real conspirator behind the alleged occurrence. Md. Afsar has not taken the name of this petitioner in his statement. Even otherwise, the investigation has not revealed any connectivity between the petitioner and Md. Afsar or any other co-accused. At least, in the case diary there is no material to that effect.

8. It is further pointed out that in paragraph '180' of the case diary, it has come that after investigation, the I.O. did not find any material on the point of involvement of the petitioner and the co-accused Md. Saddam. Co-accused Md. Saddam has been granted privilege of anticipatory bail by a learned Co-ordinate Bench of this Court in Cr. Misc. No. 46858 of 2023 whereas Abdul Sarwar Kuraishi @ Mintu whose name has transpired as a conspirator has been granted privilege of



anticipatory bail by learned Additional District and Sessions Judge-XIV, Bhagalpur in A.B.P. No. 2381 of 2023.

9. Learned counsel further submits that during the pendency of the anticipatory bail application in the court of learned Sessions Judge, in a routine and mechanical manner, the I.O. of the case obtained process under Section 82 Cr.P.C., however, the petitioner was never absconding and he was seeking his remedy in accordance with law. Referring to the judgment of the Hon'ble Supreme Court in the case of **Lavesh versus State (NCT of Delhi)** reported in **(2012) 8 SCC 730**, learned counsel submits that ordinarily, once proclamation is exhausted against the accused, the prayer for anticipatory bail is not to be entertained, however, that is not always a hard and fast rule and in an appropriate case where it has been noticed that the petitioner was not absconding and he was seeking his remedy before the court of law, this Court has exercised its power under Section 438 Cr.P.C. Reference in this regard has been made to the judgment of this Court in the case of **Krishna Mohan Lal versus the State of Bihar** reported in **2022 (3) BLJ 74** which was though challenged before the Hon'ble Supreme Court but the Hon'ble Supreme Court did not interfere with the same.

10. Learned APP for the State as well as learned



counsel for the informant have though opposed the prayer for anticipatory bail of the petitioner but after going through the case diary, learned APP admits that in paragraph '180' of the case diary, it has come that after investigation, no material could be found against the petitioner and Md. Saddam. No distinguishable feature of the case of the petitioner from that of Md. Saddam has been pointed out. It is not disputed that the case of the petitioner stands on a better footing from that of Abdul Sarwar Kuraishi @ Mintu.

11. Having regard to the facts and circumstances of the case and the materials which have been noticed hereinabove particularly, the opinion of the Investigating Officer in paragraph '180' of the case diary saying that no material has been found against the petitioner and the case diary otherwise does not reveal any material connecting the petitioner with the alleged occurrence, at this stage, also noticing that the co-accused similarly situated has been granted privilege of anticipatory bail by a learned Co-ordinate Bench of this Court in Cr. Misc. No. 46858 of 2023 and the case of the petitioner stands on a better footing from that of Abdul Sarwar Kuraishi @ Mintu, this Court directs that in case of his arrest or surrender within a period of four weeks from today, the petitioner above



named be released on bail in connection with Mojahidpur P.S. Case No. 74 of 2023 on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of learned Judicial Magistrate-1st Class, Bhagalpur, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

12. And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

13. This application stands allowed.

(Rajeev Ranjan Prasad, J)

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