

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55423 of 2022

Arising Out of PS. Case No.-99 Year-2019 Thana- KEWATI District- Darbhanga

1. MD. KAZIM SON OF MD. SABBIR R/O VILLAGE- BARHI, P.S.- KEOTI, DISTT.- DARBHANGA
2. MD. MOJAHID SON OF MD. JABBAR @ JABBAR (MARHUM) R/O VILLAGE- BARHI, P.S.- KEOTI, DISTT.- DARBHANGA
3. MD. TABESH @ MD. TAWESH @ TABEJ SON OF MD. KAZIM R/O VILLAGE- BARHI, P.S.- KEOTI, DISTT.- DARBHANGA

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Vinay Kumar Mishra,Advocate
For the Opposite Party/s : Mr.Mohammad Sufyan,APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

2 20-01-2023 Heard learned counsel for the petitioners and Mr. Mohammad Sufyan, learned APP for the State.

The petitioners apprehend their arrest in connection with Keoti P.S. Case No. 99 of 2019 for the offence registered under Sections 147, 149, 341, 323, 324, 354(B), 379, 504 and 506 of the Indian Penal Code.

As per the FIR, the allegation against the accused persons is/are of barging into the home of the informant and assaulting number of family members and in the process giving '*iron rod*' blow to Md. Mustafa as also Zeenat Praween. Further allegation is of throwing the informant's grand-daughter on the



ground, causing injuries to her. As the local arrived, they retreated.

Learned counsel for the petitioners submit that it is a matter of case and counter case and their case being earlier one and further the occurrence is of 11.06.2019 while the FIR was lodged on 01.06.2019. His further submission is that the petitioners have never misused the privilege of bail.

Considering the aforesaid, the police have granted bail on 30.08.2019. However, after investigation, police submitted charge sheet under Sections 341, 323, 324, 354, 504 and 506 of the Indian Penal Code Vide Charge Sheet No. 179 of 2019 necessitating fresh prayer for anticipatory bail and after rejection by the learned Sessions Judge, the present petition has been filed.

In this connection, it would be important to take note of the case of **Mahendra Prasad Singh Vs The State of Bihar** reported in **2004 (3) PLJR 491**. Paragraph nos. - 4 & 5 of the judgment is relevant which reads as under :-

“4. On considering the relevant provision in the Code of Criminal Procedures, this Court is of the opinion that had the FIR been only for bailable offences and had the petitioner been granted benefit of bail by the police for bailable offences



only under the provisions of Section 436 of the Cr.P.C. the matter could have stood on different footing. On account of offence being treated as non-bailable at the later stage due to subsequent developments, may be an application for anticipatory bail could have been found maintainable. However, in the present case which is falling for consideration this Court is of the view that since the case was initially for non-bailable offences wherein the petitioner was taken into custody and then released on bail by the police, an application for anticipatory bail on the ground that he has an apprehension of arrest in the same case cannot be held to be maintainable.”

5. In the facts of the case, petitioner must honour the terms of police bail and appear before the Court without any delay. In case, petitioner appears before the Court below within six weeks then the Court below shall consider his prayer for bail in accordance with law keeping in view the well established principle that a person who is already on bail shall not be denied such privilege unless there is any allegations of misuse etc. With this observation this application for anticipatory bail is disposed of.”

Taking into account the aforesaid facts, this Court is



of the considered view that if the petitioners present themselves before the concerned Court within four weeks and file petition for grant of bail which will be considered and disposed of preferably on the same day. While passing the order, the learned Court shall take into account the fact that after lodging of the FIR, the police had granted bail on 31.08.2019 which according to the learned counsel for the petitioners were never misused by them.

With the aforesaid observation, the anticipatory bail application stands disposed of.

(Rajiv Roy, J)

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