

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13405 of 2024

Arising Out of PS. Case No.-278 Year-2019 Thana- DHAMDAHA District- Purnia

1. Chandan Bhagat (M), aged about 30 years, Son Of Guneshwar Bhagat, Resident Of Village - Sishwa,
2. Pintu Jaiswal (M), aged about 32 years, Son Of Late Chandan Jaswal, Resident Of Village - Sudama
Both are resident under P.S. - Bhawanipur, District - Purnea

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Raj Kumar, Advocate
For the Opposite Party/s : Mr. Ajit Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 16-04-2024 Heard Mr. Raj Kumar, learned counsel appearing on behalf of the petitioners and Mr. Jharkhandi Upadhyay, learned APP for the State.

2. The petitioners seek pre-arrest bail in connection with Dhamdaha P.S. Case No. 278 of 2019, registered for the offence punishable under Sections 341, 323, 324, 504/34 of the Indian Penal Code and Section 27 of the Arms Act.

3. As per the allegation made in the FIR, accused persons named therein along with the petitioners had abused the wife of the informant and had fired upon the informant, which hit his left arm.

4. Learned counsel appearing on behalf of the



petitioners submitted that petitioners were given benefit of Section 41 of Cr.P.C. by the Investigating Officer and the District Court has recorded the same, however, has found the anticipatory bail filed by the petitioners to be not maintainable and directed the petitioners to seek regular bail. Learned counsel further submitted that even considering the merits of the case and the allegation made in the FIR, it would appear that the petitioners are innocent and the allegation of assault is though substantiated by the injury report, but as per the opinion of the doctor, the injury is simple in nature and not on the vital part of the body. Learned counsel in support of his submission that anticipatory bail is maintainable even after submission of the charge-sheet, has relied on the judgment of the Apex Court in case of ***Gurbaksh Singh Sibbia Etc vs State Of Punjab*** reported in ***AIR 1980 SC 1632***. On these grounds, petitioners seek to be released on pre-arrest bail.

5. Mr. Ajit Kumar, learned A.P.P. for the State submitted that anticipatory bail is not maintainable after submission of the charge-sheet and, as such, the relief prayed for by the petitioner cannot be entertained.

6. Considering the nature of allegation made in the FIR, as well as, the observation made by the Apex Court in case



of *Gurbaksh Singh Sibbia Etc vs State Of Punjab* reported in *AIR 1980 SC 1632*, I am of the opinion that petitioners have, *prima facie*, made out a case to be released on pre-arrest bail.

7. So far as, question of maintainability of anticipatory bail application is concerned, the Apex Court in case of *Bharat Chaudhary v. State of Bihar* reported in (2003) 8 SCC 77, *Ravindra Saxena v. State of Rajasthan* reported in (2010) 1 SCC 684, *Vinod Kumar Sharma v. State of Uttar Pradesh* reported in 2021 SCC OnLine SC 3225, *Bhadresh Bipinbhai Sheth v. State of Gujarat* reported in (2016) 1 SCC 152 and *Mahdoo Bava v. Central Bureau of Investigation* reported in 2023 SCC OnLine SC 299, has found that legislation has not imposed any restriction as regards the stage upto which an application for anticipatory bail can be entertained. That being the case, the objection raised by the learned A.P.P. for the State is not sustainable.

8. The petitioners, above named, are directed to be released on pre-arrest bail, in the event of their arrest or surrender before the Court below within a period of four weeks from today, on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) each with two sureties of the like amount each to the satisfaction of learned C.J.M, Purnea, in



connection with Dhamdaha P.S. Case No. 278 of 2019, subject to the condition as laid down under Section 438(2) of the Cr.P.C.

9. The Court below is directed to verify the criminal antecedent of the petitioners as stated in paragraph no. 3 of the bail application. If any other case is pending against the petitioners as what has been stated in paragraph no. 3, this order will lose its force automatically.

(Purnendu Singh, J)

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