

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21356 of 2024**

Arising Out of PS. Case No.-79 Year-2016 Thana- CHAKAI District- Jamui

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Darogi Yadav Son of Bodhan Yadav Resident of Village- Dudhania, P.O. and
P.S.- Sano, District- Jamui

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

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

For the Opposite Party/s : Ms.Suman Kumari Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH
MISHRA**

ORAL ORDER

4 20-07-2024 Heard learned counsel for the petitioner, learned APP
for the State and perused the case diary.

2. The petitioner seeks bail in connection with Chakai
P.S. Case No. 79 of 2016, G.R. Case No. 1233 of 2016 instituted
for the offences under Sections 302/34, 120B of the Indian
Penal Code and Sections 16, 17, 18, 19, 20, 21, 22 of the U.A.P.
Act.

3. Prosecution case, in short, is that one Radhe Rai
gave his fardbeyan on 14.07.2016, allegeing therein that on
13.07.2016, one Bhola Rai called a Panchayati regarding dispute



in between his wife and mother. During the course of Panchayati 14-15 persons, variously armed in black and plain uniform came at the spot and took away Mahendra Rai, assaulted him by means of lathi-danda and one Surang Yadav cut the neck of the Mahendra Rai by means of Axe. The informant also identified Lal Mohan Yadav, Sidhu Koda, Darogi Yadav (petitioner) and Mochhu @ Ajay Da. It is further alleged that after committing the murder, accused persons left the place of occurrence chanting slogan '*Inkalab Jindabad Bakpa Maovadi Jindabad.*'

4. Learned counsel for the petitioner submitted that the petitioner is innocent and has falsely been implicated in the present case. Learned counsel further submitted that petitioner is neither a naxal nor has any concern with the naxal organization. Learned counsel for the petitioner further submitted that from perusal of the FIR is it clear that no any specific role has been attributed to the petitioner except the mention of his name as a member of naxal gang. Learned counsel further submitted that specific allegation of giving axe blow on the neck of the deceased is attributed to co-accused Surang Yadav. Learned counsel further submitted that there are twenty-one cases pending against the petitioner and due to the large number of criminal antecedent, petitioner has been



dragged in this case merely on the basis of suspicion. It has been submitted on behalf of the petitioner that the petitioner is in custody since 23.12.2022.

5. Learned A.P.P. for the State has vehemently opposed the prayer for grant of bail to the petitioner. Learned APP further submitted that there is ample material against the petitioner in the case diary to establish his active participation in the offence beyond the reasonable doubt, coupled with the fact that petitioner has fairly a large number of criminal antecedents. Learned counsel further referring to Section 43-D (5) and 43-D(6) of the Unlawful Activities Prevention Act, 1967 submitted that bail must be rejected if there are reasonable grounds for believing that the accusation against person alleged of offences punishable under Chapter IV and VI of the UAP Act is prima facie true. Learned APP for the State further submitted that since police after investigation submitted charge-sheet under Section 302/34, 120B of the Indian Penal Code and Sections 16, 17, 18, 19, 20, 21, 22 of the UAP Act, prima facie, the involvement of the petitioner in the alleged offences cannot be denied. Learned counsel, therefore, contended that in the light of the present facts and circumstances of the case, the prayer of the petitioner for grant of bail may be rejected.



6. For better appreciation of the case, Section 43-D of UAP Act, is quoted hereinbelow:-

“ 43-D. Modified application of certain provisions of the Code.-

(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and “cognizable case” as defined in that clause shall be construed accordingly.

(2) (4)

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release: Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.”



7. Section 43-D(5) of the UAP Act modifies the application of the general bail provisions in respect of offences punishable under Chapter IV and VI of the UAP Act. From bare perusal of Section 43-D(5) it is evident that the said Section puts a complete embargo on the powers of the Court to release an accused on bail. The Hon'ble Apex Court in ***Gurwinder Singh vs. State of Punjab and Anr.*[(2024) 5 SCC 403]** has observed that the often quoted phrase “*bail is the rule, jail is the exception*” is not applicable in the cases under UAP Act. It is further observed by the Hon'ble Apex Court that if there are reasonable grounds for believing that the accusation against such person as regards commission of offence(s) under Chapter IV and/or Chapter VI of the UAP Act, is prima facie true, such person shall not be released on bail. After perusing the material available in the case dairy as well as the report submitted by the police under Section 173(2) of the Cr.P.C., it appears that the accusation against the petitioner is found, prima facie, true.

8. Having considered the rival submission of the parties and the material placed on record as also taking into account the embargo put under Section 43-D(5) of the UAP Act, this Court is not inclined to grant bail to the petitioner.

9. Accordingly, the prayer for grant of bail to the



petitioner is, hereby, rejected.

10. Learned trial Court is directed to expedite the trial.

(Rudra Prakash Mishra, J)

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