

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32801 of 2023

Arising Out of PS. Case No.-651 Year-2018 Thana- KHAGARIA District- Khagaria

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Bhajan Tanti @ Bhajan Kumar, aged about 33 years (Male), Son Of Late
Bindeshwari Tanti Resident Of Village- Sanhauli Ps- Chitragupta Nagar
District- Khagaria

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

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

For the Opposite Party/s : Mr. Nagendra Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

5 01-03-2024 Heard Mr. Binod Kumar, learned counsel appearing
on behalf of the petitioner and Mr. Nagendra Prasad, learned
APP for the State.

2. Petitioner, who is in custody since 16.12.2020,
seeks regular bail in connection with S.C. No. 84 of 2021
arising out of Khagaria (Chitragupta Nagar) P.S. Case No. 651
of 2018 registered for offences punishable under Sections
302/34 of the Indian Penal Code.

3. Learned counsel appearing on behalf of the
petitioner submitted that the progress of the trial has delayed as
would appear from the report dated 27.05.2023 submitted by the
Additional District and Sessions Judge- 1st -cum- Special Judge,



Khagaria, that out of 7 witnesses, four witnesses have been examined, however, even after lapse of more than nine months, no progress has taken place in conduct of the trial from the recent letter of the learned Additional Sessions Judge-III, Civil Court, Khagaria.

4. Learned A.P.P., for the State has opposed the prayer for grant of bail to the petitioner.

5. While underscoring the importance of deciding bail/ anticipatory bail applications expeditiously, the Hon'ble Supreme Court in the case *Amol Vitthal Vahile v. State of Maharashtra, 2024 SCC OnLine SC 201*, has *inter alia* made following observations:

“ 3. Needless to state that Article 21 of the Constitution of India is the soul of the Constitution as the liberty of a citizen is of paramount importance. Not deciding the matter pertaining to liberty of a citizen expeditiously and shunting away the matter on one or the other ground would deprive the party of their precious right guaranteed under Article 21 of the Constitution of India.”

6. In *Mahipal v. Rajesh Kumar [Mahipal v. Rajesh Kumar, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558]* , where the High Court released [*Rajesh Kumar v. State of Rajasthan, 2019 SCC OnLine Raj 5197*] the accused on bail in a case for the offence under Section 302IPC and other offences



recording the only contention put forth by the counsel for the accused and further recording that “taking into account the facts and circumstances of the case and without expressing the opinion on merits of case, this Court deems fit, just and proper to enlarge/release the accused on bail”, while setting aside the order passed by the High Court granting bail, the Apex Court observed in paras 11 and 12 as under :

“11. Essentially, this Court is required to analyse whether there was a valid exercise of the power conferred by Section 439 CrPC to grant bail. The power to grant bail under Section 439 is of a wide amplitude. But it is well settled that though the grant of bail involves the exercise of the discretionary power of the court, it has to be exercised in a judicious manner and not as a matter of course. In Ram Govind Upadhyay v. Sudarshan Singh [Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598 : 2002 SCC (Cri) 688] , Umesh Banerjee, J. speaking for a two-Judge Bench of this Court, laid down the factors that must guide the exercise of the power to grant bail in the following terms : (SCC p. 602, paras 3-4)

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. ... The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any.



The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.”

7. Considering the manner in which the trial court
has proceeded to conduct the trial in view of the observation



made by this Court vide order dated 04.04.2022 passed in Criminal Miscellaneous No. 42971 of 2021, as well as, considering that other co-accused persons have already been released on bail, without going into the merits of the case, I am of the opinion that the right granted under Article 21 of the Constitution of India must not be defeated.

8. Considering the fact that the trial court has not seriously taken into consideration the observation made by this Court to conclude the trial well within a period of one year, the petitioner, above named, is directed to be released on bail upon furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge 1st, Khagaria, in connection with S.C. No. 84 of 2021 arising out of Khagaria (Chitragupta Nagar) P.S. Case No. 651 of 2018 subject to the following conditions:

(i) Bailors should be local having sufficient immovable property within the jurisdiction of the Court concerned.

(ii) Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the Court.

(iii) If the petitioner tampers with the evidence or the



witnesses of the case, in that case, prosecution will be at liberty to move for cancellation of bail of the petitioner.

(iv) If the petitioner is found involved in similar nature of offence, after his release on bail, the trial Court shall take steps to cancel his bail bond.

(Purnendu Singh, J)

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