

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46801 of 2024

Arising Out of PS. Case No.-168 Year-2013 Thana- SONO District- Jamui

Darogi Yadav Son of Bodhan Yadav Village- Dudhania, Po And Ps- Sano,
Dist- Jamui

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

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

For the Opposite Party/s : Mr. Anuj Kumar Shrivastava, APP

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

ORAL ORDER

5 03-12-2024 Heard learned counsel for the petitioner, learned APP
for the State and perused the case diary.

2. The petitioner seeks bail in connection with Sono
(Charka Pathar) P.S. Case No. 168 of 2013 instituted for the
offences under Sections 302, 34, 121A of the Indian Penal Code,
27 of the Arms Act, 16, 17, 18, 19, 20, 21, 22 of the U.A.P. Act.

3. Prosecution case, in short, is that, on the alleged
date and time of occurrence, all the FIR named accused persons
and 30-40 other unknown miscreants surrounded the
informant's son and assaulted him. It is further alleged that
miscreants shot the informant's son dead.

4. Learned counsel for the petitioner submitted that the
petitioner has falsely been implicated in the present case.



Learned counsel for the petitioner submits that general and omnibus allegation has been made against the petitioner. No specific overt act is alleged against the petitioner. It has been submitted on behalf of the petitioner that the petitioner is in custody since 04.02.2021 and has twenty-one criminal antecedents.

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 Sections 302/34, 121A of the Indian Penal Code, Sections 27 of the Arms Act and Sections 16, 17, 18, 19, 20, 21 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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