

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.62180 of 2024

Arising Out of PS. Case No.-60 Year-2020 Thana- MAHKAR District- Gaya

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Dharmendra Yadav @ Kedar Yadav, Son of Ramotar Yadav @ Ramawater
Yadav, Resident of Village - Sahwajpur, P.S. - Mahkar, District - Gaya

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Vinod Kumar, Advocate
For the Opposite Party/s : Mr.Md. Fahimuddin, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 27-09-2024 Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner, in the present case, is seeking pre-arrest bail in connection with Mahkar P.S. Case No.60 of 2020 registered for the offences punishable under Sections 447, 341, 342, 323, 308, 504 and 506/34 of the Indian Penal Code.

3. As per the prosecution story, on 17.06.2020 at 08:00 pm in the night, when the informant and his brothers among other villagers were sitting at Devi Sthan for a *panchayat* with regard to partition of land, Dharmendra Kumar (the petitioner) started abusing the informant and on objection by the informant, he started assaulting him. Thereafter, all the accused persons, namely, Sunil Yadav, Gajendra Yadav, Rajan Yadav and cousin brother Rambharos Yadav, Awad Kishore, Akhilesh Ya-



dav and Sanjay Kumar @ Gandhijee armed with lathi, iron rod, farsa and garasa came there and started assaulting the informant's side. It is alleged that Dharmendra Kumar (the petitioner) assaulted with farsa on the head of the informant due to which he suffered injury, in the meanwhile, when Subodh Kumar came to rescue, accused Ram Bharos @ Bhushan Yadav assaulted him with iron rod due to which he got his hand fractured. It is further alleged that petitioner no. 3 assaulted Fula Devi with lathi due to which her left hand got fractured and he also snatched *mangalsutra* from her neck.

4. Learned counsel for the petitioner submits that from a bare reading of the FIR, it would appear that the quarrel had taken place between the petitioner and the informant's side on account of a *Panchayati* which was taking place for partition of the property. Referring to the order dated 06.06.2024 passed by this Court in the case of co-accused in Cr.Misc. No.33660 of 2024, learned counsel submits that having regard to the submission that there was no specific allegation of commission of overt act against them and that the petitioner no.3 had caused a simple injury, this Court granted them privilege of pre-arrest bail.

5. It is submitted that even though it is alleged in the FIR that this petitioner had assaulted the informant but in course



of investigation of the case, the I.O. did not find it necessary to arrest him and he has given benefit of notice under Section 41-A of the Code of Criminal Procedure (in short 'Cr.P.C.'). Learned counsel submits that, at this stage, the petitioner has to move this Court for grant of pre-arrest bail only because after investigation police has submitted a charge-sheet for the offences under Sections 447, 341, 342, 330, 308, 504 and 506 of the Indian Penal Code and the learned Magistrate has taken cognizance thereof.

6. It is submitted that the fact that the petitioner was given benefit of Section 41-A of Cr.P.C. is mentioned in the impugned order also.

7. Learned A.P.P. for the State submits that once the benefit of Section 41-A Cr.P.C. has been given to the petitioner and if the petitioner has complied with the notices and cooperated in course of investigation, his case would be covered by the judgment of the Hon'ble Supreme Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and Another** reported in **(2022) 10 SCC 51**. It is submitted that the petitioner need not have any apprehension that on his surrender in the court below he would be taken into custody.

8. Having heard learned counsel for the petitioner and



learned APP for the State, this Court finds substance in the submission of learned APP for the State. In the case of **Satender Kumar Antil** (supra), the Hon'ble Supreme Court has issued categorical directions to police as well as the learned Magistrate to ensure compliance with Section 41-A Cr.P.C. The Hon'ble Supreme Court has, in fact, considered in paragraph '46' of the judgment that Section 204 of Cr.P.C. speaks issue of process while commencing the proceeding before the Magistrate. Paragraph '46' of the judgment is being reproduced hereunder for a ready reference:-

“**46.** Section 204 of the Code speaks of issue of process while commencing the proceeding before the Magistrate. Sub-section (1)(b) gives a discretion to a Magistrate qua a warrant case, either to issue a warrant or a summons. As this provision gives a discretion, and being procedural in nature, it is to be exercised as a matter of course by following the prescription of Section 88 of the Code. Thus, issuing a warrant may be an exception in which case the Magistrate will have to give reasons.”

9. Having said so, the Hon'ble Supreme Court has further considered Section 209 of the Cr.P.C. and has observed in paragraph '47' as under:-

“**47.** Section 209 of the Code pertains to commitment of a case to a Court of Session by the Magistrate when the offence is triable exclusively by



the said court. Clauses (a) and (b) of Section 209 of the Code give ample power to the Magistrate to remand a person into custody during or until the conclusion of the trial. Since the power is to be exercised by the Magistrate on a case-to-case basis, it is his wisdom in either remanding an accused or granting bail. Even here, it is judicial discretion which the Magistrate has to exercise. As we have already dealt with the definition of bail, which in simple parlance means a release subject to the restrictions and conditions, a Magistrate can take a call even without an application for bail if he is inclined to do so. In such a case he can seek a bond or surety, and thus can take recourse to Section 88. However, if he is to remand the case for the reasons to be recorded, then the said person has to be heard. Here again, we make it clear that there is no need for a separate application and Magistrate is required to afford an opportunity and to pass a speaking order on bail.”

10. From the judgment of the Hon’ble Supreme Court, this Court finds that the petitioner has apparently no threat of arrest or being taken into custody. The learned Magistrate, who has taken cognizance and issued summons to the petitioner, can well appreciate that if the petitioner was not arrested in course of investigation and was given benefit of Section 41-A Cr.P.C. and that the said accused having received the notice has cooperated with the investigation, there would be no need of his incarceration in course of trial.



11. This Court is of the considered opinion that if the petitioner appears before the learned Magistrate pursuant to summon, he may either seek regular bail before the court or request the court to dispense with his personal appearance if the circumstances so exist. The prayer of the petitioner shall be considered on the same day of filing of the petition and the learned court below shall pass an appropriate order on the same day-keeping in view the directions of the Hon’ble Supreme Court in the case of **Satender Kumar Antil** (supra). One of the observations of the Hon’ble Supreme Court mentioned in paragraph ‘70’ of the judgment is being quoted hereunder for a ready reference:-

“70. The power of a court is quite enormous while exercising the power under Section 437. Apart from the general principle which we have discussed, the court is also empowered to grant bail on special reasons. The said power has to be exercised keeping in view the mandate of Sections 41 and 41-A of the Code as well. If there is a proper exercise of power either by the investigating agencies or by the court, the majority of the problem of the undertrials would be taken care of.”

12. This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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