

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.64375 of 2024

Arising Out of PS. Case No.-863 Year-2024 Thana- PHULWARISHARIF District- Patna

Md. Naushad Mallick @ Md. Naushad Alam @ Naushad Mallick Son of Late
Nasim Alam Moh- Khalilpura Ps- Phulwari Sharif Dist- Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma- Sr. Advocate Mr. Atul Kumar Mehta Ms. Sushmita Singh
For the State	:	Mr. Jharkhandi Upadhyay- A.P.P.
For the Informant	:	Mr. Sarvan Kumar Mr. Pankaj Kumar Mr. Sudhakar Ranjan

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 17-10-2024 1. Heard learned senior counsel for the petitioner, the
learned counsel appearing on behalf of the informant and
learned APP for the State.

2. The petitioner seeks bail in anticipation of his arrest in a case registered for the offences punishable under Sections 147, 148, 149, 447, 323, 341, 307, 386, 504 and 506 of the Indian Penal Code and Section 27 of the Arms Act.

3. The learned senior counsel for the petitioner submits that the petitioner has antecedent of six cases. It is next submitted that the easiest way to deal with this anticipatory bail application is to reject it at the outset in the nature of allegation as alleged in the FIR, but then, the same would amount to



travesty of justice. It is next submitted that informant alleges that he is a site Supervisor of Luck-stone Build-teck Private Limited. Further, on 22.06.2024 at 1.20 P.M., he along with owner of the company namely Md. Tajuddin were going to inspect the site of the Bajrangbali Colony when a Ford Endeavour Car came and Md. Naushad Mallick (petitioner), Md. Hasan Ali, Md. Tannu Mallick, Md. Nishant Mallick and Md. Hasan Ali alighted variously armed and came to the house of Md. Tajuddin and said that extortion of Rs.1,50,00,000/- was demanded, but the same has not been given despite a week passing. Thereafter, petitioner fired indiscriminately at the informant causing injury on right elbow. It is next alleged that thereafter, other accused persons also started firing at him and after sometimes, more than 100 unknown accused on 25-30 motorcycles came and started firing on the house and relatives of the informant and thereafter, accused Md. Kamil, Md. Rocky, Md. Saubi Khan, Md. Ansari and Md. Prince with gun in their hands went to the construction site firing, further, local people informed the police. The accused on seeing the police fled leaving behind vehicles as detailed in the FIR.

4. The learned senior counsel for the petitioner submits that the instant FIR, which came to be instituted at the



instance of the informant is Phulwarisharif P. S. Case No.863 of 2024 dated 23.06.2024. It is next submitted that for the same occurrence, the police had instituted Phulwarisharif P. S. Case No.862 of 2024 dated 23.06.2024, as such, the instant FIR is the second FIR. It is next submitted that whether for the same offence two FIRs can be instituted, thereafter draws the attention of the Court to Annexure-3 to the anticipatory bail application i.e. Cr. Misc. No.64578 of 2021 (Mukul Kumar @ A.J. vs. the State of Bihar). The learned senior counsel submits that when the case was taken up, a learned Coordinate Bench of this Court by order dated 06.07.2022 had directed the Director General of Police, Bihar, Patna to file an affidavit as to whether lodging of two separate cases in respect of the same transaction is logical and permissible in law and is it not burdening the load of investigation on police and simultaneously the whole judicial system in terms of pendency of cases. It is next submitted that thereafter again the case was taken up on 06.07.2022, when the counter-affidavit on behalf of the Director General of Police, Bihar was filed. It is next submitted that the petitioner of Cr. Misc. No.64578 of 2021 was granted the privilege of bail and the D.G.P., Bihar was directed to file his counter-affidavit and when Cr. Misc. No.64578 of 2021 was taken up on 06.07.2022,



the learned Coordinate Bench disposed of the aforesaid Criminal Miscellaneous taking into account the pleadings made in the counter-affidavit wherein Memo No.1531/Policy decision dated 13.06.2022 was annexed by which a guideline was issued by the D.G.P., Bihar with regard to instituting second FIR. The learned senior counsel next submits that the order dated 06.07.2022 takes note of the Memo No.1531 dated 13.06.2022 in detail and from perusal of one of the clauses of the Memo dated 13.06.2022, it would manifest that the same permitted instituting of second FIR provided the place of occurrence and accused were different and it was not possible to investigate the case based on first FIR apart from other direction given to the S.Ps. of various districts.

5. The learned senior counsel submits that the first FIR i.e. Phulwarisharif P. S. Case No.862 of 2024 dated 23.06.2024 which was instituted by the police was with respect to the same occurrence for which the second FIR was instituted and as per the guidelines the institution of the second FIR was not permissible.

6. It is further submitted that while disposing of Cr. Misc. No.64578 of 2021 by order dated 06.07.2022 the learned Coordinate Bench had specifically recorded that:- *“Any police officer acting contrary to the guidelines as contained in Annexure ‘A’ shall*



not only be proceeded against departmentally but would also be liable to be punished for committing contempt of this Court. The Director General of Police, Bihar, Patna is directed to circulate a copy of this order with appropriate instructions to all the authorities to whom the copies of memo no.1531 dated 13.06.2022 has been endorsed.”

7. The learned senior counsel next submits that petitioner had moved this Court seeking anticipatory bail in Phulwarisharif P. S. Case No.862 of 2024 by filing Cr. Misc. No.65000 of 2024, which is pending adjudication. It is next submitted that the outcome of the said Criminal Miscellaneous can go both ways, but then, if privilege of anticipatory bail is granted, in that case, the petitioner still will have apprehension of being arrested in the instant case.

8. Learned A.P.P. as well as the learned counsel appearing on behalf of the informant opposes the anticipatory bail application, but then, are not in a position to rebut the submission of the learned senior counsel for the petitioner that the instant FIR is a second FIR with respect to the same occurrence and petitioner is also availing his remedies available in law with respect to the first FIR.

9. After hearing the learned counsel for the parties, the petitioner, above-named, in the event of his arrest or surrender before the learned Court below within a period of six



weeks, is directed to be released on bail on his furnishing bail-bonds in the sum of Rs. 50,000/- (Rupees Fifty Thousand) with two sureties of the like amount each to the satisfaction of the learned A.C.J.M.-XIV, Patna in connection with Phulwarisharif P. S. Case No.863 of 2024, subject to the conditions laid down under Section 438(2) of the Cr.P.C. with a condition that one of the bailors of the petitioner shall be his cousin brother Mister Alam.

10. The application stands allowed.

11. It is made clear that privilege of anticipatory bail has been granted to the petitioner not on merits of the case but on the ground that for the same offence two FIR were instituted and the instant FIR is the second FIR.

12. The learned senior counsel for the petitioner, at this stage, clarifies that some of the accused in Phulwarisharif P. S. Case No.862 of 2024 have been granted bail and some bail applications of other accused have been rejected, but then, none of the accused have moved this Court seeking anticipatory bail in the instant FIR.

(Satyavrat Verma, J)

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