

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2070 of 2024

Arising Out of PS. Case No.-316 Year-2023 Thana- GORIAKOTHI District- Siwan

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Rohit Tiwari @ Rohit Kumar Tiwari Son of Vijendra Tiwari Resident of
Village- Madhopur, P.S.- G.B. Nagar, Dist.- Siwan (Bihar)

... .. Appellant/s

Versus

1. The State of Bihar
2. Sohil Majhi Son of Ramjatan Manjhi Resident of Village- Kalyanpur, P.S.-
Goriakothi, Dist.- Siwan (Bihar)

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Kanishk Kaustubh, Advocate
For the Respondent/s	:	Mrs. Usha Kumari 1, SPP
For the Informant	:	Mr. Udit Narayan Singh, Advocate

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

ORAL ORDER

3 05-02-2025 Heard learned counsel for the appellant, learned

Special Public Prosecutor for the State and learned counsel for

the informant.

2. The instant appeal has been filed by the appellant
against the order dated 08.04.2024 passed by learned First
Additional Session Judge-vum-Special Judge (SC/ST Act),
Siwan whereby the prayer for anticipatory bail of the appellant
in connection with Goriakothi P.S. Case No. 316 of 2023 under
Sections 447, 341, 323, 307, 302, 504, 34 of the Indian Penal
Code and Sections 3(1), 3(1)(z), 3(1)(v), 3(1)(a) of SC/ST Act



was rejected.

3. The prosecution case, in short, is that on the alleged date and time of occurrence, all the FIR named accused persons along with three other unknown persons came at the house of the informant and started abusing him by caste name and also started assaulting him. It is further alleged that they dragged him out of his house and Sittu Singh tied the informant on his motorcycle and dragged him to his house and, thereafter, tied him with a pillar and, thereafter, all the accused persons assaulted him with legs, fists, sticks and lathi as a result of which he sustained injuries. It is further alleged that later on, the informant died.

4. Learned counsel for the appellant submits that the appellant has falsely been implicated in the present case. Learned counsel further submitted that the appellant is not named in the F.I.R. The name of the appellant has transpired on the basis of suspicion. Learned counsel further submitted that one of the accused, Rudal Kumar, is named in the FIR and was later on identified as this appellant but as a matter of fact, the investigating authority in connivance with the real accused are trying to implicated the appellant in the present case by adding the alias name to his name. Learned counsel for the appellant



further submits that the appellant has not taken the caste name of the informant in public view, hence, no offence under the provisions of SC/ST Act is made out against him. The appellant has no intention to disgrace the image of the informant in public view. The appellant has three criminal antecedents.

5. Learned Special P.P. for the State and the informant have vehemently opposed the prayer for grant of bail to the appellant, stating that the appellant is named in the FIR and the same is also evident from paragraph nos. 6 and 7 of the case diary. Learned Spl. PP further submitted that proceedings under Section 82 of the Cr.P.C. was initiated against the appellant on 14.03.2024. Learned Spl. PP further submitted that as per post-mortem report, the cause of death is craniocerebral damage resulting from head injury and injuries have been caused by hard and blunt substance which clearly supports the case of the prosecution. Learned Spl. PP and learned counsel for the informant jointly prayed that the appellant may not be released on bail. Learned Spl. PP further placing reliance on the judgment passed by Hon'ble Apex Court in the case of ***Srikant Upadhyay and others vs. State of Bihar and another*** in **Criminal Appeal No. 2024 (@Special Leave Petition (Crl.) No. 7940 of 2023)** reported in **2024 SCC OnLine SC 282**



submitted that when the warrant of arrest or proclamation is issued against the person/appellant who keeps defying the orders and keeps absconding is not entitled to grant of pre-arrest bail.

6. For better appreciation of the case, the portion of the aforementioned judgment is being reproduced hereinbelow:

“25. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as



it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant.”

7. Considering the aforesaid facts and circumstances of the present case, material available in the case diary supported by the medical evidence, and also the fact that proceedings under Section 82 of the Cr.P.C. was already initiated against the appellant, this Court is not inclined to grant



anticipatory bail to the appellant. Accordingly the prayer of the appellant for grant of pre-arrest bail is rejected as not maintainable.

8. The appeal is dismissed.

(Rudra Prakash Mishra, J)

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