

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59149 of 2024

Arising Out of PS. Case No.-44 Year-2022 Thana- BHAGWANGANJ District- Patna

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Sujeet Kumar @ Ritu Raj @ Sanjeet Kumar S/O Durga Charan Prasad
Resident of Village Devaria Po And Ps Masaurhi District Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Diwakar Prasad Singh, Adv.

For the Opposite Party/s : Mr. Choubey Jawahar, APP

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

ORAL ORDER

7 07-02-2025 Heard learned counsel for the petitioner and Mr.

Choubey Jawahar, learned A.P.P. for the State.

2. In compliance to the order of this Court, the Investigating Officer of Bhagwanganj P.S. Case No. 44 of 2022 has appeared, in person, before this Court along with the up to date case diary and report regarding Sections 82 and 83 proceedings of the Cr.P.C. He submits that proclamation under Section 82 Cr.P.C. has been issued against the petitioner by the learned court below on 05.02.2025. The investigation is still pending.

3. The petitioner apprehends his arrest in connection with Bhagwanganj P.S. Case No. 44 of 2022 registered for the offences punishable under Sections 363 and 365 of the Indian



Penal Code.

4. As per prosecution case, on the alleged date and time of occurrence, the son of the Informant had gone to watch dance programme in the village Anouli but, he did not return. The allegation has been made against the petitioner of being involved in commission of murder of the Informant's son.

5. Learned counsel for the petitioner submits that the petitioner is innocent and has committed no offence as alleged against him and has falsely been implicated in the present case. Learned counsel for the petitioner submits that in fact the deceased was initially missing and, later on, reportedly killed by some other who was allowed bail by the learned court below. He further submits that the petitioner is not named in the F.I.R. and his name has surfaced in this case on the basis of the disclosures made by the co-accused Bipin Kumar contained in Para-121 of the case diary. The Informant, who is the mother of the deceased, has not supported the prosecution case and has made allegation against the co-accused Nitish Kumar who was having altercation with her son on the alleged day of occurrence. Learned counsel for the petitioner further submits that the co-accused in his confessional statement has taken the names of three co-accused persons namely Afshar Mallick, Rajnish Pandit



and Sonu Yadav but, has not taken the name of the petitioner of being involved in the alleged occurrence. He further submits that the statement of the two independent witness namely Raghvendra Kumar and Shambhu Mahto, the eye-witnesses, have stated that the petitioner had arrived early in the programme but, returned immediately and, thus, have said nothing adverse against the petitioner. He further submits that the Investigating Officer has submitted charge-sheet after first round of investigation on the basis of the confessional statement of the co-accused Nitish Kumar against Nitish Kumar and Afshar Malick and the investigation is pending against others. There is no independent witness to the alleged occurrence and the statement of Radheshyam Singh is wholly unreliable. Learned counsel for the petitioner further submits that there is no witness to the alleged occurrence of killing and the petitioner is facing prosecution on the basis of the statement of Radheshyam Singh in whose daughter's marriage function, the programme was being arranged. Learned counsel for the petitioner has also filed supplementary affidavit stating therein that Radheshyam Singh @ Radhe Yadav has been declared hostile by the learned court below since he did not support the prosecution case. The Informant has also not taken the name of



the petitioner and, as such, the main accused who confessed his involvement in this case has been acquitted by the learned court below. The petitioner has one criminal antecedent as has been stated in paragraph no.3 of the present anticipatory bail application. The petitioner has no concern with the alleged occurrence.

6. Learned counsel for the petitioner further submits that the co-accused has been granted regular bail by this Court vide order dated 21.09.2024 passed in Cr. Misc. No. 47651 of 2024.

7. Learned A.P.P. for the State opposes the prayer for anticipatory bail of the petitioner, stating that the offence alleged against the petitioner is serious in nature. Charge-sheet has been submitted against the other co-accused persons. The investigation is still pending. As per statement of the witness Radhe Shyam contained in Para-35 of the case diary, it appears that the petitioner has actively participated in the alleged offence of committing murder of the deceased. Learned counsel for the petitioner submits that from the impugned order, it appears that the after murder of the deceased, the Investigating Officer of this case has made a prayer for adding Sections 364/302/201/120B of the I.P.C. Learned APP 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.

8. For better appreciation of the case, the portion of the aforementioned judgment is being reproduced herein below:

“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.”

9. Considering the aforesaid facts and circumstances of the present case, material available in the case diary and also the fact that proceedings under Section 82 of the Cr.P.C. was already initiated against the petitioner, this Court is not inclined to grant anticipatory bail to the petitioner.

10. Accordingly, the prayer for anticipatory bail of the petitioner, above named, is rejected as not maintainable. If the petitioner surrenders before the court below within a period of four weeks from today and prays for regular bail, the same would be considered by the court below in accordance with law without being prejudiced by the order of this Court.



11. The personal appearance of the Investigating Officer of Bhagwanganj P.S. Case No. 44 of 2022 is hereby dispensed with.

(Rudra Prakash Mishra, J)

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