

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29894 of 2018

Arising Out of PS.Case No. -94 Year- 2018 Thana -SHEKHPURA District- SEKHPURA

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Rajeev Nayan Singh, Son of Late Bilaity Singh, Resident of Village-
Bhadaus, P.S.- Sheikhpura (Sirari) District- Sheikhpura.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Dr. Anjani Pd. Singh, Advocate

For the Opposite Party/s : Mr. Anil Prasad Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL ORDER

2 18-05-2018 Heard Dr. Anjani Prasad Singh, learned counsel for
the petitioner. Also, heard Mr. Anil Prasad Singh, learned
Additional Public Prosecutor for the State.

2. The petitioner has moved this application under
Section 438 of the Code of Criminal Procedure (for short 'Cr.
P.C.')

for grant of pre-arrest bail apprehending arrest in
connection with Sheikhpura (Sirari) P.S. Case No.94 of 2018
dated 09.03.2018 registered for the offences punishable under
Sections 341, 323, 342, 363 and 504 read with 34 of the Indian
Penal Code.

3. Prior to the filing of the instant application, the



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petitioner had filed an application for grant of pre-arrest bail before the learned Session Judge, Sheikhpura in the aforementioned case, who rejected the application vide order dated 13.04.2018 passed in ABP No.156 of 2018 observing as under:-

“Considering the facts, circumstances of the case and seriousness of offence and participation of the petitioner into commission of such crime, I am not inclined to grant him Anticipatory bail. Accordingly his Anticipatory bail petition is hereby rejected.”

4. Dr. Anjani Prasad Singh, learned counsel for the petitioner while pressing the petition filed under Section 438 of the Cr. P.C. submitted that the petitioner has got no criminal antecedent. He has been framed by the informant in a false case and having great stakes in life, if he is sent to jail, his entire career would be ruined.

5. On the other hand, learned Additional Public Prosecutor for the State opposed the application for grant of pre-arrest bail to the petitioner on the ground of seriousness of the offence.

6. Having noticed that all the provisions of the Indian Penal Code under which the first information report has



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been instituted, when the counsel for the petitioner was asked as to how an application under Section 438 of the Cr. P.C. would be maintainable, he submitted that since the learned Session Judge has rejected the application for grant of pre-arrest bail on the ground of seriousness of offence, the petitioner has got reasonable apprehension of arrest at the hands of the police.

7. Apparently, this case reveals a very disturbing state of practice prevailing in the court below.

8. The Cr. P.C. talks in detail about the bail process and how it is obtained. However, it does not define bail. Section 2(a) of the Cr. P.C., however, says that “bailable offence” means an offence which is shown as bailable in the First Schedule or which is made bailable by any other law for the time being in force; and “non-bailable offence” means any other offence.

9. Thus, Section 2(a) Cr. P.C. talks about schedule of the Cr. P.C. which refers to all the offences under the Indian Penal Code and puts them into bailable and non-bailable categories, which have been determined according to the nature of the crime.

10. The provisions prescribed under Sections 436 to 450 talks about the process of bail and bail bonds in criminal cases and about the security to secure release in a criminal case.



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Section 436 of the Cr. P.C. provides that when any person other than a person accused of a “non-bailable offence” is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or any stage of the proceeding before such Court to give bail, such person shall be released on bail.

11. Thus, the right to claim bail granted by Section 436 of the Cr. P.C. in a “bailable offence” is an absolute and indefeasible right. In such case, there is no question of discretion in granting bail as the words of Section 436 are imperative.

12. Since the provisions prescribed under Sections 341, 323, 342, 363 and 504 read with 34 of the Indian Penal Code under which the FIR has been instituted against the petitioner are all bailable in nature, the right to claim bail by the petitioner in the case in hand is an absolute and indefeasible right. There is no question of discretion in such matters. However, instead of appearing before the court of Magistrate and seeking bail under Section 436 of the Cr. P.C., the lawyer conducting the case in the court below filed an application under Section 438 of the Cr. P.C. seeking pre-arrest bail.

13. At this stage, I must record that it is shocking to



note that the learned Session Judge also failed to appreciate the legal position and erroneously rejected the prayer of the petitioner on the ground of “seriousness of offence and participation of the petitioner into commission of crime”. The order speaks a volume about the casual manner in which the learned Session Judge is disposing of the bail matters. He ought to have rejected the application on the ground of its non-maintainability considering the provisions prescribed under Section 438(1) of the Cr. P.C.

14. In order to correctly appreciate the legal position, Section 438(1) of the Cr. P.C. may be noticed as under:-

“438. Direction for grant of bail to person apprehending arrest.-(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, *inter alia*, the following factors, namely:-

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;



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(iii) the possibility of the applicant to flee from justice; and

(iv) Where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application.”

15. From reading of the aforementioned Section 438(1) of the Cr. P.C., it would appear that there must be an accusation against the person concerned of having committed non-bailable offences for which he has reason to believe of getting arrested. Only on such condition precedent, he may approach either the High Court or the Court of Session for a direction that he may be released on bail in the event of such arrest.

16. It is reiterated that since all the offences under which the first information report has been registered against the



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petitioner are bailable in nature, the learned Session Judge ought to have rejected the application preferred before him under Section 438 of the Cr. P.C. on the ground of its maintainability and not on the ground of “seriousness of offence and participation of the petitioner into commission of such crime”. Such an erroneous order is not expected from a Judicial Officer of the rank of Session Judge. This Court hopes and trusts that in future the Officer would be more cautious while passing judicial order.

17. At this stage, I must also say that even the lawyers assisting the Court either for the petitioner or the prosecution are supposed to conduct the case responsibly. They have failed to do so in the court below as also before this Court. They are officers of the Court. They have a duty towards the client as also towards the Court. It is not expected from an advocate that he would suggest his client to file pre-arrest bail application in a case instituted only for bailable offences. The lawyer appearing for the State is also not expected to oppose the application mechanically. He also has a duty to assist the Court in arriving at a just decision in a case. I say no more.

18. The application for grant of pre-arrest bail is rejected as not maintainable. The petitioner may appear before



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the jurisdictional Magistrate and seek bail in accordance with law.

19. Let a copy of the order be communicated to the Session Judge, Sheikhpura.

(Ashwani Kumar Singh, J.)

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