
(2006) 05 PAT CK 0004
In the Patna High Court
Case No : Cr. Misc. No. 18108 of 2006

Anirudh Prasad @ Sadhu Yadav

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 22-05-2006

Acts Referred:

Citation : (2006) 05 PAT CK 0004

Judgement

Chandramauli Kr. Prasad, J.—Petitioner apprehends his arrest in Special Case No. 11 of 2005 arising out of Vigilance P.S. Case No. 08 of 2005 registered u/s 406, 409, 420, 465, 467, 468, 477A, 109, 209 and /120B of the Indian Penal Code and Section 13(2) read with Section 13(1) of the Prevention of Corruption Act and prays for grant of anticipatory bail.

2. Petitioner earlier came to this Court for grant of anticipatory bail which was registered as Cr.Misc.No. 10949 of 2006 (Anirudh Prasad @ Anidh Prasad @ Amirudi Prasad @ Sadhu Yadav v. The State of Bihar). While acceding to prayer of the petitioner by order dated 9.3.2006, this Court directed that the said order shall not enure to his benefit after the submission of the charge sheet.

3. The Charge sheet has been submitted against the petitioner in this case.

4. Petitioner, thereafter, filed application for grant of anticipatory bail bearing Bail Application No. 1152 of 2006 before the Delhi High Court. When the matter was taken up, petitioner sought leave to withdraw the application. The Delhi Court by order dated 24.4.2006 acceded to his prayer and dismissed the said application as withdrawn. Thereafter, petitioner filed the present application before this Court and when the matter was taken up on 1.5.2006, at the joint request of the party, same was adjourned to 8.5.2006. In the meanwhile, petitioner filed application for modification of the order before the Delhi High Court and on the said application, the Delhi High Court passed the following order on 5.5.2006:

This is an application for modification/clarification of order dated 24.4.2006. The modification/clarification that is sought by this application is that the petitioner

be at liberty to move before the Hon'ble Patna High Court. There is no question of the modification/clarification of the order as the order is absolutely clear. The learned Counsel for the petitioner sought leave to withdraw bail application at that stage and it was dismissed as withdrawn. As such, as is apparent, no observation was made on merit. In point of fact, the application was withdrawn inasmuch as it had been wrongly stated in the application that no application for bail has been made in any other court whereas it transpired subsequently that an application had been made in the trial court at Patna. This fact came to light when the counsel for the State of Bihar appeared and filed the counter affidavit which was taken on record. The prayer for modification/clarification stands disallowed. This application stands disposed of. Dasti to both the parties.

5. Thereafter when the matter was taken up on 8.5.2006, this Court dismissed the application filed by the petitioner for grant of anticipatory bail, inter alia, observing as follows:

Thus, the application filed by the petitioner before the Delhi High Court has been dismissed as withdrawn without giving liberty to the petitioner to approach this Court. True it is that the Delhi High Court while rejecting the prayer did not go into the merit of the case, none the less it had dismissed the application as withdrawn. In view of aforesaid, the propriety demands that I should not go into the merit of the case.

6. Petitioner, aggrieved by the same, preferred Special Leave to Appeal (Cr.) No. 2466 of 2006 before the Supreme Court. The Supreme Court, by order dated 15.5.2006, disposed of the said SLP in the following words:

We find no reason why the High Court of Patna should not have entertained the application for grant of bail. The High Court of Delhi dismissed as withdrawn the bail application filed by the petitioner. It has also been subsequently clarified by order dated 5th May, 2006 that the Delhi high Court did not make any observation on the merit of the case.

Under these circumstances, if the High Court of Patna does not consider it appropriate to deal with the bail application of the petitioner, he will be left with no remedy. We therefore, direct the High Court of Patna to entertain the bail application and pass such order as it may deem appropriate in the facts of the case.

Nothing said in this order shall be construed as expression of opinion on the merit of the bail application.

7. This is how the application for grant of anticipatory bail has been listed before me for consideration afresh.

8. Learned Advocate General, appearing on behalf of the prosecution raises a preliminary objection and submits that this Court in the earlier application filed for anticipatory bail, granted relief till the submission of the charge sheet and now that the charge sheet has been submitted, this Court is denuded of the

power to entertain fresh application. In support of the submission, reliance has been placed on a decision of the Supreme Court in the case of Salauddin Abdulsamad Shaikh Vs. State of Maharashtra, and my attention has been drawn to the following passage from paragraph No. 2 of the judgment which reads as follows.:

2. xxx It is, therefore, necessary that such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted.

9. Mr. Ganesh Prasad Singh, Senior Advocate, however, appearing on behalf of the petitioner, submits that after the submission of the charge sheet nothing presents this Court from exercising its discretion and granting anticipatory bail, if the facts and circumstances of the present case so justify. In support of the submission, reliance has been placed on a decision of the Supreme Court in the case of Bharat Chaudhary and Another Vs. State of Bihar and Another, and my attention has been drawn to paragraph Nos. 10 and 11 of the said judgment which read as follows:

10.- From the above observations, we are unable to read any restriction on the power of the courts empowered to grant anticipatory bail u/s 438 of Cr.P.C.

11. We respectfully agree with the observations of this Court in the said case that the duration of anticipatory bail should be normally limited till the trial court has the necessary material before it to pass such orders and it thinks fit on the material available before it. That is only a restriction in regard to blanket anticipatory bail for an unspecified period. This Judgment in our opinion does not support the extreme argument addressed on behalf of the learned Counsel for the respondent State that the courts specified in Section 438 of Cr.P.C. are denuded of their power under the said section where either the cognizance is taken by the court concerned or a charge-sheet is filed before the appropriate court. As stated above, this would only amount to defeat the very object for which Section 438 was introduced in Cr.P.C. in the year 1973.

10. Having appreciated the rival submission, I find substance in the submission of Mr. Singh. In my opinion mere submission of the charge sheet does not denude this Court the power to grant anticipatory bail. I may hasten to add that whether in the facts of a given case one may or may not be entitled for grant of anticipatory bail but as a proposition of law it can not be said that in a case in which once the anticipatory bail is given till the submission of charge-sheet, later on the Court can not entertain another application. This principle the Court follows on the premise that later, on investigation fresh materials may come. Precisely on this consideration, earlier I acceded to the prayer of the petitioner for limited period.

11. According to the prosecution one of the king-pins and master-mind of the

flood-relief scam Santosh Kumar Jha deposited in the Bank account of the petitioner, Rs. 6 lakhs and the money for issuance of the said draft was withdrawn from the account, where the money siphoned from the scam was deposited. The prosecution allege that the explanation put forth by the petitioner that the said amount is the consideration money of the car sold by him to the father of the master-mind and king-pin Santosh Kumar Jha is absolutely untrue and the Natural corollary of the same is that petitioner is involved in the scam.

12. Mr. Singh, contends that merely the fact that the money has been deposited in the petitioner's account which is of the Flood Relief Scam, it cannot be said that the petitioner knew that it is a Scam money. He points out that to show petitioner's complicity in the crime, there has to be some material to show that he knew that it is the scam money. He submits that merely on the allegation that the petitioner knew Santosh Kumar Jha, the master-mind and one of the king pins behind the scam as pointed out by the learned Advocate General, one can not come to the conclusion that petitioner, in fact, knew that it is a scam money. He candidly submits that petitioner is a Member of Parliament and do accept donation and unless and until, it is established that he knew the source of money, no criminal liability can be fastened on him. He emphasises that there is no material to show that petitioner in any way either helped Santosh Kumar Jha to procure business directly or indirectly by either influencing the public servants or for that matter ever made any attempt to screen the offence so as to infer his involvement in the crime.

13. Learned Advocate General contends that in the scam of such nature, no direct evidence of conspiracy is expected and prayer for anticipatory bail deserves to be rejected.

14. In the present case, emphasis is on the person. Whether a person like the petitioner Anirudh Prasad alias Sadhu Yadav deserves to be granted anticipatory bail. I do not know what kind of a person the petitioner is. In fact, I am not supposed to know it also. Nothing has been brought on record to suggest that petitioner is involved in any other case. Judges do not sit and should not sit in ivory tower and while exercising its discretion must take into consideration the public opinion. But I am firmly of the view that the public opinion should not cloud their reason.

15. Learned Advocate General states that the State shall make endeavour for expeditious conclusion of the trial.

16. Having heard learned Counsel for the party and taking into consideration the facts and circumstances of the case, I allow this application and direct that in the event of arrest/surrender in the aforesaid case, within two weeks, petitioner, named-above, be enlarged on bail on furnishing personal bond of Rs. 50000/ (fifty thousand) with two sureties of the like amount each to the satisfaction of the Special Judge, Vigilance, (South Bihar), Patna, subject to the petitioner giving following Undertakings:

- (i) He shall make himself available for interrogation by Police Officer,
- (ii) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer,
- (iii) He shall not leave India without prior permission of the court and shall deposit his Pass Port to the court concerned.
- (iv) He shall cooperate in expeditious disposal of the trial.

17. Breach of one or more of the conditions aforesaid, may lead to cancellation of his bail.