
(2019) 12 JH CK 0120

In the Jharkhand High Court

Case No : Anticipatory Bail No. 5949 Of 2019

Nishit Kumar Misra @ Nishit Kumar Mishra

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 09-12-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 438(2)

Indian Penal Code, 1860 — Section 34, 406, 420, 467, 468, 471

Citation : (2019) 12 JH CK 0120

Hon'ble Judges : Anil Kumar Choudhary, J

Bench : Single Bench

Advocate : N.K. Pasari, Laxmi Murmu, Indrajit Sinha

Judgement

The learned counsel for the petitioners submits that the defect pointed out by the Stamp Reporter that page no.29 is incomplete, is beyond the capacity

of the petitioners to rectify as the same being the part of the complaint which upon being referred to the police under section 156(3) Cr.P.C., this

F.I.R. was lodged was filed as such by the complainant in the trial court. Hence, it is submitted the defect pointed out at serial no. 9(xi) be ignored.

Considering the aforesaid fact, the defect pointed out at serial no. 9(xi) is ignored.

Apprehending their arrest, the petitioners have moved this Court for grant of privilege of anticipatory bail in connection with Ratu P.S. Case No.93 of

2018 arising out of Complaint Case No.1806 of 2018 (G.R. No.2971 of 2018) registered under sections 420/406/467/468/471/34 of the Indian Penal

Code.

Heard the parties.

The Learned counsel for the petitioners submits that the brief facts of the case is

that the co-accused persons, informant and other persons were directors of M/s Prateek Agro Experts Pvt. Ltd. which is a company incorporated under the Company law and the bank account of the company is used by the co-accused Pramod Maheshwari and the allegation against the petitioners is that both of them were appointed as Additional Directors of the said M/s Prateek Agro Experts Pvt. Ltd. on 17.02.2018 and in criminal conspiracy with the co-accused persons submitted a fake resolution in the Bank of India by displacing the informant from the post of Director and replacing him with petitioner no.1 who is employee of another company of which the co-accused is "Narain Holani is the director namely Acmechem Private Ltd. It is further submitted that the co-accused is "Narain Holani resigned and released from the liability of the company on and from 04.03.2016 and from that date onwards he has no concern with the said M/s Prateek Agro Experts Pvt. Ltd. It is next submitted that the main allegation is against the co-accused is "Pramod Maheshwari and Saurav Maheshwari, the accused nos. 1 and 2 of the complaint and by 12.02.2018 the petitioners were no way associated with the said company. It is next submitted that even after exit from the company existing directors sought guidance from the co-accused persons for the business and in February, 2018 in their presence a settlement has been arrived at between the existing directors of the company and at their instance the existing directors have resolved to settle the matter amicably and for this Pramod Maheshwari will pay Rs.4,00,00,000/- to the informant by 31.03.2018 and in case of failure, a sum of Rs.50,00,000/- shall be charged as penalty and in the said settlement both the parties have to put their signatures but these two petitioners are admittedly not signatory to the said settlement. It is further alleged that a fake resolution has been submitted for displacing the informant from the post of Director and replacing them by the two petitioners. It is further submitted by the learned counsel for the petitioners that as the petitioners were no way associated with the said Prateek Agro Experts Pvt. Ltd. by the time; the alleged fake resolution was prepared and submitted to the bank. Hence, the petitioners are no way responsible for the said criminal acts. It is next submitted that the allegation against the petitioners are false and since the complaint which upon being forwarded to police upon which the F.I.R. was lodged is not supported by affidavit hence in view of principle of law

settled by the Supreme Court of India in the case of Priyanka Srivastava & Anr. Vs State of U.P. & Ors. reported in (2015) 6 SCC 287, the

registration of the FIR is illegal. It is next submitted that the petitioners have no criminal antecedent as has been mentioned in paragraph no. 15 (E) of

the anticipatory bail application and the allegation of involvement of the petitioners in a conspiracy is only a figment of imagination of informant. It is

lastly submitted that the co-accused persons have already been given the privilege of anticipatory bail by this Court vide order dated 08.08.2019,

passed in A.B.A. No. 5192 of 2019 and vide order dated 24.10.2019, passed in A.B.A. No. 5055 of 2019. Hence, it is submitted that the petitioners be

also given the privilege of anticipatory bail.

Learned Addl. P.P. and the learned counsel for the opposite party no.2 oppose the prayer for grant of anticipatory bail and the learned counsel for the

opposite party no.2 submits that the complainant has filed an affidavit before the trial court in support of his complaint and not supporting the contents

of a complaint is a curable irregularity, hence no fault be found because of the complaint being not supported by any affidavit.

The aforesaid submission of the learned counsel for the opposite party no.2 is countered by the learned counsel for the petitioner and the learned

counsel for the petitioner submits that though the Honâ??ble High Court of Uttarakhand at Nainital in a Judgment in Criminal Revision No. 252 of

2019 dated 31.07.2019 has held that non-filing of such affidavit in support of a complaint is rectifiable one but the Honâ??ble Supreme Court of India

vide its order dated 02.09.2019, passed in Special Leave to Appeal (Crl.) No. 7694 of 2019 having stayed the operation of the said order of High Court

of Uttarakhand at Nainital; the net effect is that Priyanka Srivastava & Anr. Vs State of U.P. & Ors. reported in (2015) 6 SCC 287 (Supra) holds the

field but the learned counsel for the petitioner submits that he will file a counter affidavit and prays for time.

List this case on 22.01.2020.

Considering the submissions of the counsels and the fact as discussed above, I am inclined to pass an interim order of anticipatory bail provisionally till

22.01.2020. In case of the petitioners being arrested by the police on or before 22.01.2020, they shall be released on bail provisionally on furnishing bail

bond of Rs.25,000/- (Rupees Twenty Five Thousand) each with two sureties of

like amount each to the satisfaction of the officer concerned in connection with Ratu P.S. Case No.93 of 2018 arising out of Complaint Case No.1806 of 2018 (G.R. No.2971 of 2018), subject to the conditions laid down under Section 438(2) of the Code of Criminal Procedure.