

ITEM NO.8

COURT NO.6

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No.4496/2023

(Arising out of the Impugned Final Judgment and Order dated 21-03-2023 in CRLMN No.74217/2022 passed by the High Court of Judicature at Patna)

ADITYA KUMAR

Petitioner(s)

VERSUS

THE STATE OF BIHAR & ANR.

Respondent(s)

(IA No.72128/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No.72129/2023 - EXEMPTION FROM FILING O.T.

IA No.153994/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 22-11-2023 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ANIRUDDHA BOSE

HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Petitioner(s) Mr. Siddhartha Dave, Sr. Adv.
Mr. S.D. Sanjay, Sr. Adv.
Mr. Ashish Batra, AOR

For Respondent(s) Mr. Saket Singh, Adv.
Ms. Sangeeta Singh, Adv.
Mrs. Niranjana Singh, AOR

UPON hearing the Counsel, the Court passed the following
O R D E R

Heard Mr. Siddhartha Dave, learned senior counsel for the petitioner and Mr. Saket Singh, learned counsel for the State.

2. The present Special Leave Petition under Article 136 of the Constitution of India has been filed against the Impugned Judgment dated 21.03.2023

passed by the Patna High Court, which declined pre-arrest bail to the petitioner who is accused of offences under Sections 353, 387, 419, 420, 467, 468 and 120B of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC') and Sections 66C and 66D of the Information Technology Act, 2000 (hereinafter referred to as the 'I.T. Act'). The allegation(s), basically, against the petitioner are that he, being an officer of the Indian Police Service, in connivance with other co-accused had conspired for deriving undue benefit(s) of either postings or for getting disciplinary proceedings initiated against him dropped. The crux of the case is that for the benefit of the petitioner, and with his active knowledge and connivance, through SIM Cards obtained by the co-accused, on which a WhatsApp account with a picture of the then Hon'ble the Chief Justice¹ of the Patna High Court was created, and; using the said WhatsApp account, calls and messages are alleged to have been made to the then Director General of Police, Bihar (hereinafter referred to as the 'DGP') for obtaining favourable decisions.

3. Mr. Dave, learned senior counsel for the petitioner submits that upon being granted interim protection by this Court on 12.05.2023, he has

1 Presently, a sitting Judge of this Court.

cooperated with the investigating agency whenever called him. He submits, on instructions, that as per the petitioner's information, based on newspaper reports in the local dailies of Bihar, the Charge Sheet is also likely to be submitted, which indicates that investigation has been completed. Thus, according to him, no purpose shall be served if the petitioner is directed to surrender or is taken into custody. It is submitted that, at best, from the entire reading of the First Information Report (hereinafter referred to as the 'FIR') itself, it is clear that whatever allegations have been levelled against the petitioner are based on statements made by the co-accused connecting him to the crime but no direct evidence has come, at least as far as the petitioner is concerned, to substantiate that he was an active participant or had done any specific overt act in pursuance of a conspiracy. Further, it is submitted that even from the Sections invoked in the FIR, it is apparent that at the highest, there may be some justification in charging him under the I.T. Act but, under the IPC, the Sections *per se* do not apply to him. It is submitted that the DGP to whom the calls were made has surprisingly not been made an accused and is now sought to be made a witness against the petitioner in the present case, which

clearly shows that the authorities are trying to find a scapegoat as the matter had grown out of proportion due to the so-called 'involvement' of the high constitutional office of the Hon'ble the Chief Justice of the Patna High Court. It is submitted that the Court could take into consideration the fact that once custodial interrogation is not required, merely because the allegations are of a serious nature, a person should not be asked to surrender and undergo incarceration.

4. Mr. S.D. Sanjay, learned senior counsel, who has also assisted the Court on behalf of the petitioner, *via* video-conferencing, submitted that ultimately no benefit has accrued to the petitioner out of any of the alleged acts/transactions. It is submitted that all this was only a result of the backlash from a senior Inspector-General rank officer, with whom the petitioner had differences when both were posted together in one of the districts.

5. *Per contra*, Mr. Saket Singh, learned counsel appearing for the State of Bihar and the Economic Offences Unit (the investigating agency), submitted that as far as the petitioner is concerned, it cannot be said that he was a mere co-accused as he is the main beneficiary as also the mastermind of the entire

crime. Additionally, it is submitted on behalf of the State that even in the FIR and also during the investigation up to now, cogent evidence has emerged to link the petitioner physically with the co-accused and the tower locations of their mobile phones have been found at the places where witnesses have stated they had met and their purpose was very obvious, that is, only to benefit the petitioner, either in posting or for dropping the charges he was facing. It is submitted that though the petitioner has cooperated but to complete the link, his mobile phone/handset is required to complete the chain with regard to the factum that the WhatsApp messages which have been exchanged with the phones of the co-accused were actually received/delivered to the number of the petitioner. It is submitted that initially even the SIM Cards were not directly bought in the name of any of the named accused and had passed through four different hands and ultimately came in the possession of the co-accused from which a false WhatsApp account was created, as described *supra*. Utilising the same, such calls and messages/chats were made and evidence of these calls and chats have been retrieved by the investigating agency. Mr. Singh urged that the *modus operandi* was that screenshots of such chats from the number impersonating the Hon'ble the Chief Justice of

the Patna High Court, were taken and sent to another number and from that number, the same was forwarded to the petitioner's mobile for keeping him updated of the developments. It is submitted that as far as the mobile handset of the petitioner is concerned, despite repeated requests by the investigating agency to produce the same, it has not been done and the worst part, according to learned counsel, is that the petitioner deliberately lied to them inasmuch as, at first, it was stated that he had left the handset at home, and later, it was stated that it was taken away by the investigating agency in a raid which was conducted in connection with another case. However, it is stated that such false claims stand exposed as it has been proved that even on the dates he claims that the handset was not with him, it was found switched off, but for a brief moment, it was switched on and the location was in Lucknow, Uttar Pradesh. He further submitted that there are many areas which the investigating agency could not delve into in the absence of proper and full interrogation, including custodial, of the petitioner, especially with regard to his mobile handset, as ultimately, it is in the personal knowledge of the petitioner. The submission is that the petitioner alone would know/remember where he had kept his mobile handset, so that at

least attempts can be made to retrieve the same, by the investigative agency.

6. It was further submitted that from a perusal of the Case Diary, which he has gone through, from what has been indicated in the judgment of the learned Single Judge, impugned herein, it is obvious that serious and multiple attempts were made by the accused, including the petitioner, also to influence the judiciary, to derive benefit(s) in judicial proceedings in pending cases.

7. It was contended that from the Case Diary, it is clear that there are chats between the two judicial officers named in the learned Single Judge's Judgment, who were in touch with the co-accused with regard to getting matters listed before a particular Bench of the Patna High Court.

8. In *Sumitha Pradeep v Arun Kumar CK*, 2022 SCC OnLine SC 1529, the Court observed as under:

'16. ... we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be

ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.'

(emphasis supplied)

9. In *Dharamraj v State of Haryana*, 2023 SCC OnLine SC 1085, the Court opined:

'11. The contours of anticipatory bail have been elaborately dealt with by 5-Judge Benches in *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565 and *Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1. *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694 is worthy of mention in this context, despite its partial overruling in *Sushila Aggarwal* (supra). We are cognizant that liberty is not to be interfered with easily. More so, when an order of pre-arrest bail already stands granted by the High Court. 12. Yet, much like bail, the grant of anticipatory bail is to be exercised with judicial discretion. The factors illustrated by this Court through its pronouncements are illustrative, and not exhaustive. Undoubtedly, the fate of each case turns on its own facts and merits. ...'

(emphasis supplied)

10. Having considered the matter, this Court is of the opinion that the petitioner is not entitled to the benefit of anticipatory bail, majorly on account of the seriousness and gravity of the alleged offences and apparent non-cooperation. We refrain from comment on the merits of the case, noting the

reiterated dictum in *Atulbhai Vithalbhai Bhanderi v State of Gujarat*, 2023 SCC OnLine SC 560². It has already been clarified that enunciation of law '*qua bail would equally apply to anticipatory bail cases. Anticipatory bail after all is one of the species of a bail.*'³ Accordingly, we affirm and uphold the Impugned Judgment. However, as there was an interim order in favour of the petitioner, it is ordered that he surrender before the Court concerned within a period of two weeks from today.

11. The larger issues, however, in view of what has been recorded by the learned Single Judge, cannot be left unattended. This Court will certainly not shut its eyes to the materials unearthed, since it relates not only to maintaining purity in judicial proceedings, but upholding public faith in the system at large. We are of the firm view that further directions are necessitated. As such, the Registrar General, Patna High Court is directed to submit, in a sealed cover, complete details of what action the High Court has taken, along with copies of relevant documents, pursuant to the reference made to '*Hon'ble the Chief Justice for taking appropriate decision on*

² In *Atulbhai Vithalbhai Bhanderi (supra)*, the Court took note of the decisions rendered in *Niranjan Singh v Prabhakar Rajaram Kharote*, (1980) 2 SCC 559 and *Vilas Pandurang Pawar v State of Maharashtra*, (2012) 8 SCC 795 on the proposition that detailed examination of the evidence and elaborate discussion on merits should be avoided when considering bail applications.

³ *Satender Kumar Antil v Central Bureau of Investigation*, 2023 SCC OnLine SC 452.

*the administrative side*⁴ apropos all such facts which have been noted in the Impugned Judgment. Learned counsel for the investigating agency/Respondent No.2 shall also make available the entire up-to-date Case Diary, with the relevant portions, flagged, in a sealed cover, on the next date.

12. The Report called for *supra* be submitted on/before 09.12.2023 by the Registrar General, Patna High Court.

13. As we have heard the matter *in extenso*, and after due deliberation, in the fitness of things, this case shall be treated as part-heard.

14. List on 12.12.2023.

15. The Registry shall add 'Patna High Court through its Registrar General' as Respondent No.3 and send requisite intimation forthwith. Learned counsel for the State may also inform the Registrar General, Patna High Court about this order for compliance.

(SNEHA DAS)
SENIOR PERSONAL ASSISTANT

(VIDYA NEGI)
ASSISTANT REGISTRAR

4 Paragraph 31 of the Impugned Judgment.