

IN THE HIGH COURT OF JHARKHAND AT RANCHI

A.B.A. No. 168 of 2022

Durga Sahu ... Petitioner
Versus
The State of Jharkhand ... Opposite Party

CORAM: HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioner : Mr. Rohit Agarwal, Advocate
Mr. Devesh Ajmani, Advocate
For the State : Mr. Shree Prakash Jha, Addl. P.P.

Order No.03 Dated- 28.04.2023

Heard the parties.

Apprehending his arrest, the petitioner has moved this Court for grant of privilege of anticipatory bail in connection with Kharsawan P.S. Case No.55 of 2019 (S-2) registered under sections 379/461 of the Indian Penal Code.

The Learned counsel for the petitioner submits that the allegation against the petitioner is that the petitioner in furtherance of common intention with the co-accused persons committed theft and purchase of stolen property of wine worth Rs.3,05,470/- and cash amount of Rs.3,135/-. It is further submitted that the allegations against the petitioner are all false. It is then submitted that the petitioner has been implicated in this case only on the basis of confessional statement of the co-accused persons.

Mr. Rohit Agarwal, Advocate who is the counsel for the petitioner in A.B.A. No. 168 of 2022 submits that on 20.01.2022 he appeared for the petitioner - Durga Sahu of this case and after instruction from the petitioner- Durga Sahu, he submitted before this Court on 20.01.2022, that the petitioner is ready and willing to cooperate with the investigation of the case and undertakes to pay Rs.3,10,000/- to the informant without prejudice to his defence in this case and after that the order dated 20.01.2022 was passed by this court granting the privilege of anticipatory bail to the petitioner subject to his depositing the said amount of ₹ 310,000/-and the petitioner is not in contact with him i.e. Mr. Rohit Agarwal, thereafter. Mr. Devesh

Ajmani, an Advocate who has not filed *Vakalatnama* is appearing in this case, submits that the petitioner opposed the Hon'ble Supreme Court of India, contending before the Supreme Court of India that he never undertook to pay the said amount of ₹ 310,000/- and consequently the order by which, this Court granted anticipatory bail to the petitioner has been set aside and the matter is remanded to this court by the Hon'ble Supreme Court of India. When the Court asks Mr. Devesh Ajmani, Advocate as to how he is appearing in this case without obtaining *Vakalatnama* from the petitioner, Mr. Devesh Ajmani, Advocate is unable to answer but he submits that by last Saturday he has been instructed by the petitioner- Durga Sahu to appear in this case and he intimated Mr. Rohit Agarwal, Advocate who is senior in practice to Mr. Devesh Ajmani, Advocate that he will appear and Mr. Rohit Agarwal, Advocate has no objection if he appears in this case. Hence, it is submitted by the learned counsel for the petitioner that the petitioner be given the privilege of anticipatory bail as he has given satisfactory answer to the police under section 41A, of the Code of Criminal Procedure.

Learned Addl. P.P. on the other hand vehemently opposes the prayer for grant of privilege of anticipatory bail to the petitioner and submits that keeping in view the misconduct and mischief committed by the petitioner that though he intimated through the counsel Mr. Rohit Agarwal, Advocate that he undertakes to pay Rs.3,10,000/- without prejudice to his defence in this case but he has appeared through his lawyer Mr. Devesh Ajmani who does not hold power and has not filed the *Vakalatnama* on his behalf and that the petitioner personally submitted before the Hon'ble Supreme Court of India that he never undertook before this court to deposit ₹ 310,000/-, itself a ground which deprives him, the privilege of anticipatory bail. It is further submitted that in view of the serious nature of allegation against the petitioner, custodial interrogation of the petitioner is highly essential for recovery of the stolen property as well as collection of a relevant evidence of the case but as the petitioner has so far avoided his arrest, the stolen articles could not be seized by police, so far. Hence, it is submitted that the petitioner ought not to be given the privilege of anticipatory bail.

Considering the serious nature of allegation against the petitioner of being involved in theft and purchase of stolen property worth several lakhs of rupees and the requirement of custodial interrogation during the investigation of the case for the purpose of recovery of the stolen articles and collection of relevant evidence; as well as the misconduct of the petitioner in falsely submitting before the Hon'ble Supreme Court of India in Special Leave to Appeal (Crl.) No(s). 1723 of 2023 that he has not undertaken to deposit Rs.3,10,000/- on 20.01.2022 before this court, this Court is not inclined to grant the privilege of anticipatory bail to the petitioner. Accordingly, the prayer for grant of the privilege of anticipatory bail to the petitioner is rejected.

(Anil Kumar Choudhary, J.)

Sonu-Gunjan/