

(2024) 12 SC CK 0067

Supreme Court Of India

Case No: Criminal Appeal No. 5579 Of 2024 (Arising Out Of Special Leave Petition
(Criminal) No. 961 Of 2024

Shambhu Debnath

APPELLANT

Vs

State Of Bihar & Ors

RESPONDENT

Date of Decision: Dec. 20, 2024

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 302, 307, 323, 341, 504

Hon'ble Judges: Vikram Nath, J; Prasanna B. Varale, J

Bench: Division Bench

Advocate: Namit Saxena, Samir Ali Khan, Arup Banerjee

Final Decision: Allowed

Judgement

Vikram Nath, J

1. Leave granted.

2. The instant appeal has been preferred by the complainant against the grant of anticipatory bail to respondents nos. 2 to 4 by the High Court of

Judicature at Patna in Criminal Miscellaneous No. 28525 of 2023, vide order dated 25.07.2023.

3. Brief facts of the present case are that the appellant herein had submitted a written application on 13.01.2023 before S.H.O., Mufasil alleging that

on the same day at around 7.00 pm, he came out of the house hearing the ruckus and saw that the body of his 20-year-old nephew, Mukesh Kumar,

was ablaze the fire. When the appellant asked his injured nephew, he was told that Sindhu Devnath, Sanjit Devnath, Ratan Devnath (respondent no. 2

herein), Lalita Devi (respondent no. 3 herein), Sunil Devnath and Rina Devi (respondent no. 4 herein) had caught hold of him, whereby Sindhu

Devnath told him that the appellant's nephew loved his daughter and all of them started beating and abusing him. Further, it was stated that all of

the accused persons, with an intention to kill, poured kerosene oil over the appellant's nephew and set his body on fire. As such, Motihari Mufasil

P.S. Case No. 28 of 2023 was lodged for the offences punishable under sections 341, 323, 307, 504 and 34 of the Indian Penal Code, 1860 "IPC".

4. In the course of the treatment, the nephew of the appellant succumbed to the burn injuries on 17.01.2023 and consequently, Section

302 of the IPC was added.

5. Apprehending their arrest in connection with the above-mentioned FIR, respondent nos. 2 to 4 preferred an application seeking anticipatory bail

before the Sessions Court which was rejected by the Court of Additional District and Sessions Judge-22, East Champaran, Motihari, vide its order

dated 24.03.2023. Subsequently, the Police submitted chargesheet against one of the accused persons namely Sindhu Devnath, wherein it was also

categorically mentioned that from the investigation so far, the case has been found true against all the accused persons named in the FIR and

subsidiary investigation of the case was still pending then.

6. Aggrieved by the rejection of anticipatory bail by the Court of Additional District and Sessions Judge, respondent nos. 2 to 4 preferred an

application seeking anticipatory bail before the Patna High Court. The High Court, vide the impugned order, allowed the application of respondent nos.

2 to 4 and granted them anticipatory bail.

7. The appellant-complainant is aggrieved by the order dated 25.07.2023 and has submitted that such a grant of anticipatory bail by the High Court

was unwarranted.

8. Notices in the instant matter were issued on 12.01.2024. However, despite service of notice, respondent nos. 2 to 4 had initially failed to put in

appearance. Eventually, the respondents did put in appearance and sought time to file counter-affidavit which was recorded in the order dated

04.11.2024. However, on 25.11.2024, we were apprised by Mr. Amitava Poddar, learned counsel appearing for the respondent-accused nos. 2 to 4

that the accused persons have instructed him not to appear on their behalf anymore. Therefore, we had directed for non-bailable warrants to be issued against respondent nos. 2 to 4 to ensure that they are taken into custody and be produced before this Court on the next date.

9. Pursuant to the abovementioned order dated 25.11.2024, respondent nos. 2 to 4 are present in the Court today.

10. Mr. Arup Banerjee, Advocate-on-Record represents respondent nos. 2 to 4. Respondent no. 4 has been produced before us by Sub Inspector Mr.

Sudhir Tiwari, East Champaran, Bihar.

11. As the respondent no. 4 has been produced in custody and such non-bailable warrants were issued only for the purpose of appearance since the respondents were evading to enter appearance before this Court, she was directed to be released.

12. As for the matter with regard to grant of anticipatory bail to the respondents-accused, the law has been enunciated by this Court in Sushila

Aggarwal v. State (NCT of Delhi) (2020) 5 SCC 1, wherein it was held that the following factors have to be considered while granting the relief of

anticipatory bail, which are as follows:

“2.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.”

13. Considering the above laid law and the fact that there are specific averments in the FIR against all the accused persons including the respondents

herein that all of them had set the deceased on fire with an intention to kill him, we fail to understand as to how the High Court had granted relief of

anticipatory bail to the respondents in an offence under Section 302 of the IPC. The High Court has erred in granting the relief in a cryptic and

mechanical manner without considering the materials available on record including the chargesheet which stated that the case has been found true

against all the accused persons of such a heinous offence of murder by pouring kerosene oil and setting the deceased on fire.

14. Therefore, in the facts and circumstances of the case, we do not deem it appropriate that anticipatory bail should be granted to the respondents-accused.

15. Accordingly, the instant appeal is allowed. The impugned order of the High Court dated 25.07.2023 is set aside. Respondent nos. 2 to 4 are directed to surrender before the Trial Court within four weeks from today and they are granted liberty to file an application for regular bail, which if filed would be considered as per law on its own merits uninfluenced by any observations made in this judgment.

16. Pending application(s), if any, shall stand disposed of.