

2025 LiveLaw (SC) 965

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
VIKRAM NATH; J., SANDEEP MEHTA; J.
SLP(Crl.)No.17805, 17569 of 2024; SEPTEMBER 17, 2025
JAGDEO PRASAD versus THE STATE OF BIHAR & ORS.**

Code of Criminal Procedure, 1973 (CrPC) - Section 439 - Anticipatory Bail - Supreme Court cautioned High Courts against directly entertaining anticipatory bail applications, stressing that litigants should ordinarily be directed to first approach the Sessions Court before invoking the High Court's concurrent jurisdiction - Held that this approach balances the interests of all the stakeholders, first by giving the aggrieved party a round of challenge before High Court, and this approach provides the High Court an opportunity to assess the judicial perspective so applied by the Sessions Court, in concurrent jurisdiction, instead of independently applying its mind from the first go - The High Court erred in granting anticipatory bail without valid reasons, ignoring aggravating factors including broad daylight contract killing and history of tense relations - Set aside bail order. [Paras 5-10]

[Arising out of impugned final judgment and order dated 12-03-2024 in CRLM No. 14816/2024 passed by the High Court of Judicature at Patna]

For Petitioner(s): Mr. Rohit Kumar Singh, AOR Mr. Shivam Sharma, Adv. Mr. Akash Kumar, Adv. Mr. Amit Kumar, Adv. Mr. Harsh Tomar, Adv. Mr. Saurabh Agrawal, Adv. Mr. Aditya Sharma, Adv.

For Respondent(s): Mr. Azmat Hayat Amanullah, AOR Ms. Ekta Kundu, Adv. Mr. Tejasvi Kumar Sharma, Adv. Mr. Shashank Manish, AOR Ms. Nidhi Sahay, Adv. Mr. Himanshu Raj, Adv. Ms. Pragati Singh, Adv. Mr. Ritansh Kumar Nand, Adv. Mr. Shubham Ranjan, Adv.

ORDER

Criminal Appeal @ SLP (Crl.) No.(s) 17805 of 2024:

1. Leave granted
2. The present appeal on behalf of the appellant-complainant assails order dated 12th March, 2024, passed by the High Court of Judicature at Patna in Criminal Miscellaneous No. 14816 of 2024. The High Court has granted anticipatory bail to respondent nos. 2 and 3 ("accused-respondents") in FIR, bearing no. 773 of 2023 dated 16th December, 2023, registered under Section 302 read with Section 34 of Indian Penal Code, 1860 ("IPC") and Section 27 of Arms Act, 1959.
3. Brief facts, in a nutshell, relevant for the disposal of the present appeal are stated hereinunder:
 - 3.1. On 16th December, 2023 the appellant-complainant submitted a written complaint before Police Station, Gopalpur alleging, *inter alia*, that his wife Kumari Pushpa ("deceased") was shot dead on the same day at about 03:30 P.M. The deceased was employed as a health worker at Primary Health Center, Pandarak.
 - 3.2. According to the appellant, his wife was killed at the behest of named accused persons, including accused-respondents, who had been continuously threatening and harassing the deceased to extort money. On account of the continuous threats as meted, the deceased had already paid lakhs of rupees to them. Finally, when the deceased was unable to meet the extortion demands, the accused got her eliminated by employing contract killers.

3.3. The police thus, registered the present FIR dated 16th December, 2023, against five accused persons, including accused-respondents. The investigation was commenced immediately.

3.4. Upon investigation, the police examined a CCTV footage from the camera installed in a shop near the place of occurrence. In the video, the deceased was seen walking with a middle-aged man from Bhelwara turn at around 03:22 P.M. when two persons riding on a bike with helmets came there, shot the deceased and fled away.

3.5. The police claimed to have achieved a breakthrough with the arrest of one Vishal Kumar, who gave a confessional statement stating that family members of the accused-respondents had hired one Bittu Kumar for a sum of Rs. 2,40,000/- for the murder of the deceased.

3.6. During the investigation, it was also revealed that it is the *modus operandi* of the accused to lend money at exorbitant interest rates of about 35% per month to individuals. To recover this amount, the accused would then coerce the borrowers into taking loans from other moneylenders and forcibly take possession of the subsequently borrowed money.

3.7. Apprehending their arrest, the accused-respondents preferred anticipatory bail application before the High Court. The High Court *vide* order dated 12th March, 2024, has allowed the anticipatory bail application. Aggrieved, the appellant-complainant is before us.

4. We have heard the learned counsel for the parties and have gone through the material available on record.

5. At the outset, we are unable to side with the reasoning ascribed by the High Court to grant anticipatory bail to the accused-respondents for the reasons discussed hereinafter.

5.1. In the impugned order, the High Court has not given any cogent reason for granting anticipatory bail to accused-respondents. It appears that the High Court was influenced by the threefold contention of learned counsel for accused-respondents. First, the accused-respondents are women with clean antecedents. Second, it was highly improbable that the deceased who was working as health worker would give lakhs of rupees in extortion. In fact, the deceased had borrowed some amount from accused no. 1 (Murari Prasad) for purchasing land and were not returning it back. Third, it was for this reason that the complainant saw an opportunity to falsely implicate the entire family of the accused-respondents.

5.2. In the present case, the accused-respondents have been named in the FIR registered at the behest of the appellant. The High Court has not fairly appreciated the gravity of the accusations levelled against the accused-respondents. There is a categorical assertion by the appellant-complainant against the accused that the latter were running a racket of granting loans at higher interest rates and later extorting the loaned money. We therefore, are unable to understand what prompted the High Court to grant anticipatory bail to the accused-respondents in such a heinous offence.

5.3. While the protection of individual liberty is important, Courts must not turn a blind eye to the suffering of the victims. A balance has to be struck to protect the individual liberty of the accused as well as to secure an environment that is free from any fear in the hearts of victim of the alleged perpetrators. Although grant of bail is a discretionary exercise, the Courts must be cautious to exercise this discretion judiciously.

5.4. In the present case, this discretion was totally uncalled for especially at the stage of anticipatory bail. The aggravating factors that ought to have weighed in with the High Court before interfering at this stage are threefold. First, the murder of appellant-complainant's wife was committed in broad daylight. Second, the murder was committed with the aid of hired assassins on contract. Third, there is a history of tensed relations between the parties that materially establish a *prima facie* case against the accused-respondents and all the more reasons to protect the victims, i.e. the appellant and his son. In our opinion, the grant of anticipatory bail to accused-respondents is unwarranted and without any valid reason which has resulted in miscarriage of justice.

6. However, before parting, we do wish to express our sincere concern with the haste at which the High Court has dealt with this matter. While the scheme of Criminal Procedure Code, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) provides concurrent jurisdiction to the High Court and Sessions Court for entertaining applications for anticipatory bail, this Court has time and again observed that High Court should always encourage exhausting an alternative/concurrent remedy before directly interfering itself. This approach balances the interests of all the stakeholders, first by giving the aggrieved party a round of challenge before the High Court. Second, this approach provides the High Court an opportunity to assess the judicial perspective so applied by the Sessions Court, in concurrent jurisdiction, instead of independently applying its mind from the first go. Further, the High Court fails to record any reason for directly granting anticipatory bail without impleading the appellant-complainant as a party.

7. Having regard to the abovementioned facts and circumstances of the case, the serious nature of the allegations against accused-respondents and the gravity of the offences alleged, we are of the view that the High Court was not justified in passing the impugned order granting anticipatory bail to the accused respondents.

8. Therefore, the order passed by the High Court dated 12th March, 2024, in Criminal Miscellaneous No. 14816 of 2024 is set aside.

9. Consequently, the appeal is allowed. Bail bonds stand cancelled.

10. Accused respondents are directed to surrender within four weeks and apply for regular bail. Needless to state that the bail application so preferred shall be considered on its own merits.

11. Pending application(s), if any, are disposed of accordingly.

Criminal Appeal @ SLP (Crl.) No. 17569 of 2024:

1. Leave granted.

2. This appeal on behalf of the appellant-complainant assails order dated 3rd September, 2024, passed by High Court of Judicature at Patna in Criminal Miscellaneous No. 42520 of 2024 whereby the anticipatory bail application preferred by respondent no. 2 in FIR, bearing no. 773 of 2023 dated 16th December, 2023, registered under Section 302 read with Section 34 of Indian Penal Code, 1860 ("IPC") and Section 27 of Arms Act, 1959 is allowed.

3. Despite due service of notice, no one has entered appearance on behalf of respondent no. 2. Hence, the appeal is being proceeded *ex-parte*.

4. The High Court has granted the benefit of anticipatory bail to respondent no. 2 on the ground of parity with accused-Vishal Kumar. It was upon the confessional statement of accused-Vishal Kumar that the name of respondent no. 2 had surfaced. As the said

accused has been granted the benefit of regular bail, therefore, the High Court opined that no useful purpose will be served by sending respondent no. 2 to jail.

5. In our opinion, the High Court has gravely erred in exercising discretionary remedy of granting anticipatory bail to respondent no. 2. There is no question of parity between accused-Vishal Kumar and respondent no. 2 as the former was granted regular bail, unlike anticipatory bail as granted to respondent no. 2.

6. The whole object of regular bail is to secure the presence of the accused during the time of trial. If the Court is convinced that the accused is not likely to evade trial, bail must be granted. Likewise, the object of anticipatory bail under Section 438 CrPC is to protect the liberty of individuals and prevent undue harassment of the accused persons by pre-trial arrest and detention.

6. In the present case, name of respondent no. 2 has come up during the course of investigation in the statement of accused-Vishal Kumar, who himself was not named in the FIR. From the allegations it is evident that accused person are running a syndicate of extorting huge amount of money by charging interest at preposterous rates. Hence, in view of the *prima facie* case being established against respondent no. 2, it was not a fit case to grant anticipatory bail to him.

7. Therefore, the order passed by the High Court dated 3rd September, 2024, in Criminal Miscellaneous No. 42520 of 2024 is set aside. Consequently, the appeal is allowed.

8. Bail bonds stand cancelled.

9. Respondent no. 2 is directed to surrender within 4 weeks and apply for regular bail. Needless to state that the bail application so preferred shall be considered on its own merits.

10. Pending application(s), if any, are disposed of accordingly.

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