

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).8565/2010

(From the judgement and order dated 19/07/2010 in CRM
No.6542/2010 of The HIGH COURT OF PATNA)

JARASINDHU CHOUBEY Petitioner(s)

VERSUS

AMRESH CHAUBEY @ A.K.CHOUBEY & ANR. Respondent(s)

(With appln(s) for exemption from filing O.T.,stay,permission to
file additional documents
(For orders)

Date: 11/01/2012 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE CYRIAC JOSEPH
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Petitioner(s) Mr. Rajiv Shankar Dvivedi,Adv.
Mr.Praveen Kumar Singh, Adv.

For Respondent(s) Mr. Gopal Singh,Adv.
Mr. Chandan Kumar, Adv.

Mr. Akhilesh Kumar Pandey ,Adv

UPON hearing counsel the Court made the following
O R D E R

Leave granted.
The appeal is allowed in terms of the signed order.

(Shashi Sareen) (Renuka Sadana)
Court Master Court Master
(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 119 OF 2012.
[Arising out of S.L.P. (Crl.) No. 8565 of 2010]

JARASINDHU CHOUBEY APPELLANT

VERSUS

AMRESH CHAUBEY@ AMRESH KUMAR CHOUBEY AND ANR. RESPONDENTS

O R D E R

1. Leave granted.

2. The appellant is the informant in FIR No. 16 of 2009 registered at Chutia Police Station. Respondent No.1, Amresh

Chaubey, is one of the accused in the case. The offences alleged are under Sections 366, 120B/34 and 302 IPC.

3. According to the allegations, the appellant's unmarried daughter Vandana Kumari aged 19 years was in love with respondent No.1 and when it was known that she had become pregnant, respondent No.1 with the aid of the co-accused brought her out of her house and strangulated her to death in a Rahar field and the dead body was stuffed in a sack and thrown in river Sone. The

appellant, who worked at Garhwa in Jharkhand, got information that Vandana Kumari had gone missing from 9.11.2009 and he returned to his village and after making enquiries lodged the FIR in Chutia Police Station in the morning of 13.11.2009 under Sections 366, 120B/34 IPC. After the dead body of Vandana Kumari was recovered

from the river in the afternoon of 13.11.2009, Section 302 IPC was

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also added in the FIR. The post-mortem of the deceased was conducted on 14.11.2009. As per the post-mortem report, the cause

of death was strangulation and the deceased was found to be

pregnant. Statements of six witnesses were recorded before the

Magistrate under Section 164 of the Cr.P.C. on 14.12.2009. O
ne

of the co-accused, Jwala Pandey, was arrested on 18.01.2010 from

Garhwa in Jharkhand. Respondent No.1, Amresh Chaubey and the

other co-accused - Karuna Kumari and Sri Ram Pandey - filed petitions for anticipatory bail in the Sessions Court, Rohtas.

Their petitions for anticipatory bail were dismissed by the

Sessions Court through a common order dated 08.02.2010. While

rejecting the prayer for anticipatory bail, the Sessions Court

referred to the statements of witnesses recorded in paragraphs 4, 8, 26 to 32, 36, 37, 45, 48 and 74 to 79 of the Case Diary

implicating the accused and held: "Considering the nature of the case and the allegations coming forth against the petitioners, it

is certainly not a case to give the petitioners relief of anticipatory bail." Accused-petitioners were directed to

surrender within 15 days and move for regular bail. The said order dated 08.02.2010 of the Sessions Court was challenged by respondent No.1 through Criminal Misc. No.6542 of 2010 filed in the High Court of Patna. The co-accused Karuna Kumari and Sri Ram Pandey also challenged the said order dated 08.02.2010 of the Sessions Court through Criminal Misc. No.6927 of 2010 filed in the

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High Court of Patna. The said Criminal Misc. No.6927 of 2010

filed by Karuna Kumari and Sri Ram Pandey was dismissed by a learned Single Judge of the High Court on 26.02.2010 holding:

"There is reflection in the impugned order itself about the

materials and evidence which has come against the petitioners

during the course of investigation.

It is a cold blooded murder

of young girl of 19 years and roles have been played."

Accordingly, the prayer for anticipatory bail was rejected

observing that the accused may surrender before the court below

and urge all such points which may be available in the regular

bail.

4. After investigation, Charge Sheet No.5/10 dated 16.04.2010

was filed against the accused Jwala Pandey under Sections 302,

201, 120B IPC read with Section 34 IPC.

Action for proclamation

and attachment had been taken against the other accused persons

including respondent No.1, as they were absconding.

On

15.04.2010, the property of the absconder, respondent No.1, was

attached under Section 83 Cr.P.C.

5. Thereafter, Criminal Misc. No.6542 of 2010 filed by

respondent No.1 came up for hearing before another learned Single

Judge of the High Court on 19.07.2010.

The prayer in the petition

was allowed and, in the event of arrest or surrender, the

petitioner was directed to be released on bail.

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6. Aggrieved by the grant of anticipatory bail to respondent No.1, the appellant has filed this appeal by special leave. We have heard learned counsel for the appellant who questioned the validity and propriety of the impugned order and prayed for setting aside the impugned order. We have also heard learned

counsel for respondent No.1 who strongly opposed the prayer of the appellant. Learned counsel for respondent No.2, State of Bihar, contended that the High Court erred in granting anticipatory bail to respondent No.1.

7. We have considered the submissions made by the learned counsel for the parties and the averments contained in the appeal and the counter affidavits filed on behalf of respondent Nos.1 and 2. Having regard to the above mentioned facts and circumstances of the case, the serious nature of the allegations against respondent No.1 and the gravity of the offences alleged, we are of the view that the High Court was not right or justified in passing the impugned order granting anticipatory bail to respondent No.1. The High Court failed to note that having taken into account the statements of the witnesses recorded in the Case Diary implicating the accused the learned Sessions Judge had come to the definite conclusion that it was not a case to give anticipatory bail. The

High Court also did not consider the fact that Criminal Misc. No.6927 of 2010 filed by the co-accused challenging the very same order dated 08.02.2010 of the Sessions Court, Rohtas had already been dismissed by another learned Single Judge of the High Court on 26.02.2010 observing that there was reflection in the impugned order itself about the materials and evidence which had come

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against the accused during the course of investigation. Respondent No.1 had been proclaimed as an absconder and his

property had been attached under Section 83 CrPC. In the impugned order, the High Court has not given any cogent reason for granting

the relief of anticipatory bail to respondent No.1 when the prayer for anticipatory bail had been rejected by the Sessions Court and the prayer of the co-accused for anticipatory bail had been rejected even by the High Court. In the impugned order, the High Court has simply stated: "Considering the facts and circumstances, prayer of the petitioner is allowed." From the impugned order, it appears that the High Court was influenced by the contention of the learned counsel for respondent No.1 that it was a case of suspicion only and that if really it was a case of pregnancy that could be terminated easily and that if respondent No.1 was really in love with the deceased, no question arose to eliminate her. The High Court has also observed that there was every possibility, rather probability, that the informant and his family members removed the deceased by killing her and disposing of the dead body. We do not find any justification for such an observation at this stage. In our view, respondent No.1 did not deserve anticipatory bail. The observations made by the High Court were quite unwarranted and without justification. The grant of anticipatory bail to respondent No.1 was without any valid reason and it resulted in miscarriage of justice. The impugned order was passed without proper application of mind. Therefore, the impugned order is liable to be set aside.

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8. Learned Counsel for respondent No.1 strenuously contended that the impugned order granting anticipatory bail to respondent No.1 was passed as early as on 19.07.2010 and no case has been made out for cancellation of bail at this stage. In this context, learned Counsel also invited our attention to the decision of this Court in Siddharam Satlingappa Mhetre v. State of Maharashtra and Others [(2011) 1 SCC 694]. However, in this case, we are not considering any prayer for cancellation of bail. On the contrary, we are considering a challenge against an order granting anticipatory bail to respondent No.1. Hence, in this case, the

Court is called upon to decide the validity and propriety of the impugned order. Having found that the impugned order is invalid and improper, we are inclined to set aside the impugned order. For the reasons stated above, we allow the appeal and set aside the impugned order of the High Court.

.....J.

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(CYRIAC JOSEPH)

...J

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(GYAN SUDHA MISRA)

New Delhi,
January 11, 2012