

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1217 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- SHEOHAR

- =====
1. Barahama Kumar, son of Bishundev Sah @ Kishundev Sah, Resident of Village- Basahiya Sekh, Police Station- Piprahi, District- Sheohar.

.... Petitioner/s

Versus

1. The State of Bihar Through The Director General of Police, Bihar, Patna.
2. The Inspector General, Economic Offence Unit, Bihar, Patna.
3. The Superintendent of Police, Sheohar.
4. The Investigation Officer of Sheohar P.S. Case No.86 of 2015, Sheohar.
5. The Senior Additional Collector cum District Manager, Bihar State Food and Civil Supply Corporation, Sheohar.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Girish Chandra Jha, Advocate Mr. Kumar Goutam, Advocate
For the E.O.U.	:	Mr. V.N.P. Sinha, Sr. Advocate Mrs. Soni Shrivastava, Advocate
For the BSFC	:	Mr. Harish Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 16-10-2017

Counter affidavit has been filed by respondent No.2.

2. Heard learned counsel for the parties.

3. The petitioner is an accused in connection with Sheohar P.S. Case No.86 of 2015. The petitioner had moved the learned Sessions Judge, Sheohar, for grant of anticipatory bail in the aforesaid case vide A.B.P. No.75 of 2017 on 15.03.2017 itself which was pending for consideration and it has been informed that the same is still pending before the learned Special Judge, Darbhanga, because during the pendency of the investigation the offences under the Prevention of Corruption Act was also added in the F.I.R.



Consequently, the matter was transferred to the Special Judge, Darbhanga.

4. By the impugned order dated 28.04.2017 the learned Court-below issued process under Section 82 Cr.P.C. against the petitioner being conscious of the fact that anticipatory bail application of the petitioner was still pending before the learned Sessions Judge vide order recorded by the Court-below on the same day i.e., 28.04.2017.

5. Contention of the petitioner against the impugned order is that for exercising power under Section 82 of the Cr.P.C. the Magistrate should have reason to believe that the petitioner has absconded or was concealing himself so that the warrant of arrest already issued could not be executed. In the present case the petitioner was not concealing himself; rather exercising his statutory right to get pre-arrest bail. Therefore, without fulfillment of the requirement of Section 82 Cr.P.C., the impugned order has been passed which is not sustainable in law.

Section 82 Cr.P.C. reads as follows:

*“82. Proclamation for person absconding.-
(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days*



from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:-

(i)(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) The Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

[(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under Section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a



declaration to that effect.]

[(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).]”

6. The law is well settled that even a person accused of crime cannot be treated except in accordance with law. The procedure cannot be allowed to be abused for some collateral process and in a casual manner without application of judicial mind. The impugned order was passed without any material on the record for satisfaction to the learned Court-below that the petitioner was concealing himself or absconding the process of law. No reason for issuance of process under Section 82 Cr.P.C. is there.

7. Hence, apparently the impugned order violates the right of the petitioner of fair trial; rather the continuance of impugned order would cause undue harassment to the petitioner. Hence, the same stands quashed and this application is allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
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