

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.24521 of 2017

Arising Out of PS.Case No. -1560 Year- 2006 Thana -BHOJPUR COMPLAINT
CASE District- BHOJPUR

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Kamakhya Narayan Singh @ Kamachhaya Singh Son of Late Radhe
Kishun Singh, Resident of Village- Bhimpura, Police Station Azimabad,
District Bhojpur.

.... Petitioner

Versus

1. The State of Bihar.
2. Damodar Singh, Son of Sri Chandradhari Singh, Resident of Village-
Bhimpura, Police Station Azimabad, District Bhojpur.

.... Opposite Party

With

Criminal Miscellaneous No. 24597 of 2017

Arising Out of PS.Case No. -1560 Year- 2006 Thana -BHOJPUR COMPLAINT
CASE District- BHOJPUR

- =====
1. Chandeshwar Prasad Singh @ Chandeshwar Prasad, Son of Late
Sukhal Singh,
 2. Anil Singh, Son of Sri Baleshwar Singh, Both Resident of Village-
Bhimpura, Police Station- Azimabad , in the District- of Bhojpur.

.... Petitioners

Versus

1. The State of Bihar.
2. Damodar Singh, Son of Sri Chandradhari Singh, Resident of Village-
Bhimpura, Police Station- Azimabad, in the District- of Bhojpur.

.... Opposite Party

With

Criminal Miscellaneous No. 24730 of 2017

Arising Out of PS.Case No. -119 Year- 2003 Thana -BHAGWANPUR District-
VAISHALI(HAJIPUR)

=====

Baidyanath Singh son of Vijay Singh resident of Village : Barauna, P.S.
Bhagwanpur, Dist : Vaishali.

.... Petitioner

Versus

The State of Bihar.

.... Opposite Party



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Appearance :

(In Cr.Misc. No. 24521 of 2017)

For the Petitioner/s : Mr. Akhileshwar Pd. Singh, Sr. Advocate
Mr. Amit Anunay, Advocate

For the Opposite Party/s : Mr. Raj Kishore Singh, APP

(In Cr.Misc. No. 24597 of 2017)

For the Petitioner/s : Mr. Akhileshwar Pd. Singh, Sr. Advocate
Mr. Amit Anunay, Advocate

For the Opposite Party/s : Mr. Raj Kishore Singh, APP

(In Cr.Misc. No. 24730 of 2017)

For the Petitioner/s : Mr. Nityanand, Advocate

For the Opposite Party/s : Mrs. Pushpa Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 28-06-2017

Heard Sri Akhileshwar Prasad Singh,
learned Senior counsel for the petitioners in Cr. Misc.
No. 24521/2017 and Cr. Misc. No. 24597/2017, as also
Sri Nityanand, Advocate, in Cr. Misc. No. 24730/2017
and the respective learned Additional Public Prosecutor
for the State. The petitioners in first two cases are
facing prosecution under Sections 323 & 406 I.P.C.
whereas the petitioner in third case is charge-sheeted,
cognizance under Sections 147, 148, 323, 324, 325, 307
& 379 of the Indian Penal Code had been taken as back
as in the year 2004 and process was issued against him.

All these three Anticipatory Bail
applications involve a common question as to whether
the benefit of Anticipatory Bail may be allowed to an
accused against whom process under Sections 82 & 83
of the Code of Criminal Procedure Code (in short the
"Code") has been issued? The accused, in all these



cases, instead of submitting themselves to the jurisdiction of the learned Magistrate who has issued process under Section 82 & 83 of the Code, as the case may be, is seeking Anticipatory Bail. For the purpose of answering this issue, I need not go into the merit of the case unless the petitioners in these cases succeed on the point mentioned above, this Court would have no occasion to decide the Anticipatory Bail application on merit. It is admitted position in all these cases that after taking cognizance the learned Magistrate issued summons and thereafter warrant for appearance of the accused, the accused did not appear, then, steps were taken for attachment and declaring them a proclaimed offender in terms of Sections 82 & 83 of the Code. After passing of the order under Sections 82 & 83 of the Code, only the accused petitioners approached the Court of learned Sessions Judge for grant of Anticipatory Bail, having been unsuccessful before the learned Sessions Judge, the petitioners have moved this Court seeking the same benefit.

Sri Akhileshwar Prasad Singh, learned Senior counsel for the petitioners, has drawn my attention towards the statement made in paragraph-11 of the application being Criminal Miscellaneous Case No.



24521/2017, and submitted that the petitioners did not receive any summon and had no knowledge about the order taking cognizance. Similar statements have been made in paragraph-11 of Criminal Miscellaneous Case No. 24597/2017. In Criminal Miscellaneous Case No. 24730/2017, the petitioner has made a statement in paragraph-7 that the process under Section 82 of the Code was issued against the petitioners, but the same was not executed till 28.09.2016. There was no knowledge of the present case or about passing of the order under Section 82 and subsequently under Section 83 of the Criminal Procedure Code.

The submissions of the learned Senior counsel for the petitioners in first two cases and the learned counsel in the third case would be that this Court may go into the correctness of the order issuing process under Sections 82 & 83 of the Code, and on being satisfied that those orders are not legal and valid, and/or, have been passed in violation of the procedure established by law, this Court can exercise its jurisdiction under Section 438 of the Code.

I am afraid the submission advanced on behalf of the petitioners cannot be accepted, as according to this Court testing the legality and validity of



an order passed in a criminal proceeding sitting in its jurisdiction under Section 438 of the Code would not be just and proper. The scope and ambit of Section 438 Cr.P.C. has been well discussed by the Constitution Bench of Hon'ble Supreme Court in **Gurbakash Singh Sibbia Vs. State of Punjab** since reported in **(1980) 2 SCC 585**. The petitioners have got remedy against an illegal order passed in a criminal proceeding and could have been well advised to seek remedy in accordance with law.

The Hon'ble Apex Court in the case of **Lavesh Vs. State (NCT of Delhi)** since reported in **(2012) 8 SCC 730**; while considering the case as to proper exercise of discretion by this Court under Section 438 of the Code where process under Section 82 of the Code has already been issued held in paragraph-12 which reads as under : -

"12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as "absconder". Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. we reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section



82 of the Code he is not entitled to the relief of anticipatory bail."

A similar contention raised before the Hon'ble Jharkhand High Court in the case of ***Sheikh Anwar @ Sk. Anwar Vs. State of Jharkhand*** since reported in ***2014 (4) JLJR 128*** was rejected.

This being the position, I am not inclined to entertain the present Anticipatory Bail application as the privilege of pre-arrest/anticipatory bail, in my opinion cannot be allowed to the petitioners on the face of the fact that process under Sections 82 & 83 of the Cr.P.C. has already been issued by the learned Magistrate.

Let the petitioners surrender before the Court below within a period of four weeks from today, if the petitioners surrender in the court below within the aforesaid period and prays for bail, the same shall be considered on its own merit and in accordance with law.

These applications are, thus, dismissed, accordingly.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	30.06.2017
Transmission Date	30.06.2017

