

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.22989 of 2017

Arising Out of PS.Case No. -43 Year- 2017 Thana -CHOUTARWA District-
WESTCHAMPARAN(BETTIAH)

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1. Anup Chaubey @ Anup Kumar Choubey, son of Pradeep Chaubey,
aged about 32 years, resident of Village- Vishrampur, P.S.- Yogapatti,
District- West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Suraj Narain Pd. Sinha, Sr. Advocate with
Mr. Kalyan Shankar, Advocate
For the Opposite Party/s : Mr. Sri Akhileshwar Dayal, APP
Mr. Nikesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL ORDER

3/ 23-05-2017

Heard learned counsel for the Petitioner and the

State as well as counsel for the Informant.

The Petitioner apprehends his arrest in Chautarwa
P.S. Case No.43 of 2017 instituted for the offence under
Section(s) 406, 420, 467, 468, 471/34 Indian Penal Code.

As per allegation in the written report, co-accused,
Deepak Choubey, was working as Manager in M. M. Enterprises,
Englishiya Petrol Pump. He misappropriated ₹24,84,171/- and
when the informant made demand, he did not provide proper
accounting and never returned the money. It is alleged in the
written report that this petitioner, who is cousin brother of
Deepak Choubey and Kanhaiya Choubey, father of Deepak
Choubey, abused the informant when the informant demanded



money from Deepak Choubey.

Counsel for the petitioner has submitted that he never worked in the aforesaid Petrol Pump at any time. As per Annexure-E to the Counter Affidavit, which is the agreement filed on behalf of the Informant, Deepak Choubey has taken responsibility to return all money to the informant, which has been found to be misappropriated by him.

Counsel for the Informant has appeared and submitted that the petitioner was also responsible along with Deepak Choubey as all the accounting was done on his instigation. He has further submitted that process under Section 82 Cr. P.C. has already been issued and, therefore, this anticipatory bail application is not maintainable. Learned counsel for the Informant has relied on the decisions of the Supreme Court in the case of ***State of Madhya Pradesh Vs. Pradeep Sharma*** reported in ***(2014)2 SCC 171*** and in the case of ***Lavesh Vs. State (NCT of Delhi)*** reported in ***(2012) 8 SCC 730*** in support of his argument.

Counsel for the Opposite Party No.2 has enclosed the order-sheet of the learned Court below as Annexure-C (page 13) to the Counter Affidavit. From perusal of Annexure-C, it appears that the learned Magistrate has ordered for issuance of



non-bailable warrant on 02.05.2017, and without proper service of non-bailable warrant, on 05.05.2017, issued process under Section 82 Cr. P.C. and thereafter issued process under Section 83 Cr. P. C. on 08.05.2017.

This Court is really unable to understand the justification of the learned Magistrate in issuing processes under Section 82/83 Cr. P. C. in such haste manner without waiting for proper service report of non-bailable warrant issued against the petitioner.

Learned counsel for the Petitioner submits that just after issuance of non-bailable warrant of arrest on 02.05.2017, the petitioner has filed this application for anticipatory bail on 03.05.2017. Thereafter, learned Court below on the petition filed by the Investigating Officer has issued processes under Section 82/83 Cr. P. C. in haste.

Be that as it may, from the allegation in the written report itself, it appears that petitioner did not work in the Petrol Pump of the informant at any time or involved in the monetary dealing of the Petrol Pump. Informant has levelled specific allegation against Deepak Choubey, who was working as Manager and the petitioner is said to be the cousin brother of the Deepak Choubey.



In the facts and circumstances of the case, prayer of the petitioner for grant of anticipatory bail is allowed. In the event of surrender/arrest of the petitioner, named above, within six weeks from today in connection with Chautarwa P.S. Case No.43 of 2017, he shall be released on anticipatory bail on furnishing bail bond of ₹10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the Additional Chief Judicial Magistrate, 1st, Bagaha, West Champaran, subject to the conditions as laid down under Section 438(2) Cr. P. C. with further conditions (1) bailors should be local having sufficient immovable property within the jurisdiction of the court concerned, (2) petitioner shall cooperate in the trial and shall be present on each and every date fixed by the court and absence on two consecutive dates without proper and reasonable reason will automatically cancel bail bond of the petitioner and (3) if petitioner tampers with the evidence or the witnesses of the case, in that case, prosecution will be at liberty to move for cancellation of bail of the petitioner.

(Sanjay Priya, J)

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