

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.505 of 2018

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Feroze Anwar @ Firoze Anwar @ Firoz Anwar, S/o Late Md.Anwarul Haque, R/o Mahalla Moharrampur, P.S.- Pirbahore, District- Patna, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Home Department, Govt. of Bihar.
2. The Sub Divisional Judicial Magistrate, Gaya.
3. Shabina Azhar, D/o Late Abu Azhar, R/o Village/Mohalla- Sibli Colony, New Karimganj, P.S.-Civil Line, District- Gaya, Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar, Adv.
Mr. Kumar Malendu, Adv.

For the Respondent/s : Mr. Mankeshwar Tiwari, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 30-03-2018

Petitioner is an accused in a Complaint Case No.916 of 2015 which is said to be pending in the court of learned Sub-Divisional Judicial Magistrate, Gaya. According to the petitioner, the complaint case has been lodged by his wife because of some matrimonial discord.

Learned counsel for the petitioner submits that in this case non-bailable warrant of arrest was issued against the petitioner without there being any service report of the summon. He submits that issuance of non-bailable warrant of arrest in addition to summon is in violation of Section 87 of the Cr.P.C.



Learned counsel for the State is present. Learned counsel submits that the plea taken by the petitioner that there was no service of summon upon him and, therefore, issuance of non-bailable warrant of arrest would not be just and proper has no basis to stand. Pointing out the statements made in the writ application, learned counsel for the State submits that it is his own case of the petitioner that his prayer for anticipatory bail was rejected by the learned Sessions Judge, Gaya on 08.11.2016 and thereafter he had approached the Hon'ble High Court but the same was also rejected on 09.05.2017. Even the Hon'ble Supreme Court has rejected his prayer for anticipatory bail on the ground that the trial proceeding has not moved further since 04.02.2016 and non-bailable warrant of arrest has been issued against the petitioner on 30.01.2017. Thus, despite there being knowledge on the part of the petitioner about issuance of summons and bailable warrant of arrest, when he did not appear, the court below has rightly issued non-bailable warrant of arrest.

Having considered the submissions on behalf of the learned counsel for the petitioner as also learned counsel representing the State from the materials on record, this Court finds that the petitioner was well aware of the issuance of summon and warrant of arrest when he had filed an anticipatory bail application in the court of learned Sessions Judge, Gaya, but the same was dismissed on



08.11.2016. This being the position, the plea taken by learned counsel the petitioner that issuance of non-bailable warrant of arrest in addition to the summon is not in accordance with law cannot be accepted by this Court.

In the aforesaid view of the matter, the writ application has no merit. It is, accordingly, dismissed.

It is submitted on behalf of the petitioner that an application under Section 205 Cr.P.C. has been filed in the court below which is pending consideration.

If it is so, on the petitioner's filing a separate application stating the circumstances under which he could not appear in the court below, the court below shall consider the same for the purpose of consideration of his 205 Cr.P.C. application. However, it will be an independent consideration by the court below and no part of the observations of this Court hereinabove would prejudice the case of the petitioner.

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	
CAV DATE	
Uploading Date	02.04.2018
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