

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2115 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District-
VAISHALI(HAJIPUR)

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1. Anand Kumar, Son of Rajan Choudhary @ Rajnath Choudhary, resident of Village- Ismailpur, present Jadhua Barai Tola, P.S.- Industrial Area, Hajipur, District- Vaishali.

2. Ranjeet Choudhary, Son of Deonath Choudhary.

3. Bhushan Chaudhary, Son of Deonath Choudhary. Both Sl. Nos. 2 & 3 are resident of Village- Jadhua, Barai Tola, P.S.- Industrial Area, District- Vaishali.

.... Petitioners

Versus

1. The State of Bihar.

2. The Inspector General of Police, Muzaffarpur.

3. The Superintendent of Police, Vaishali at Hajipur,

4. The Deputy Superintendent of Police, Hajipur, District- Vaishali.

5. The Sub-Inspector of Police, namely Shri Janaradan Sharma, Industrial Area Police Station- Hajipur, District- Vaishali.

6. The Officer-in-charge of Industrial Area, Police Station, Hajipur at Vaishali.

.... Respondents

With

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Criminal Miscellaneous No. 26275 of 2017

Arising Out of PS.Case No. -1 Year- 2017 Thana -HAZIPUR
INDUSTRIAL District- VAISHALI(HAJIPUR)

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1. Anand Kumar, Son of Rajan Chaudhary @ Rajnath Chaudhary, Resident of Village- Ismilpur, Present Jadhua Bari tola, P.S.- Industrial Area, Hajipur, District- Vaishali.

2. Ranjeet Chaudhary, Son of Deonath Chaudhary,

3. Bhushan Chaudhary, Son of Deonath Chaudhary, Both of Resident of Village- Jadhua, Barai Toal, P.S.- Industrial Area, District- Vaishali.

.... Petitioners

Versus

1. The State of Bihar

.... Opposite Party

With



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Criminal Miscellaneous No. 37864 of 2017

Arising Out of PS.Case No. -1 Year- 2017 Thana -HAZIPUR
INDUSTRIAL District- VAISHALI(HAJIPUR)

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Rajan Choudhary @ Rajnath Choudhary S/o Late Sitaram Choudhary
Resident of Village - Jadhua, Barari Tola, Police Station - Industrial
Area, Hajipur, District - Vaishali.

.... Petitioner

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioners	:	Mr. Sandeep Kumar, Advocate Mr. Nil Kamal, Advocate
For the State	:	Mr. N.H. Khan, S.C.1 Mr. Abhay Kumar No. 1, A.P.P.
For the informant	:	Mr. Mahendra Thakur, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 16-05-2018

It appears that the petitioners in the present case are facing prosecution in Industrial Area Police Station, Hazipur Case No. 01/2017 registered under Section 363, 364, 34 of the Indian Penal Code, later on Section 302/120B of the Indian Penal Code was added. Immediately after registration of F.I.R. police obtained non-bailable warrant against them and on failing to arrest the petitioners the Investigating Officer made an application before the concerned Magistrate to issue process under Section 82 for attachment of the assets of the



petitioners.

Learned counsel for the petitioners submits that the police officer had moved for issuance of process under Section 82 of the Cr.P.C. only within the period of three days from the date of obtaining the non-bailable warrant from the court. According to him no step whatsoever was taken by the police to arrest the petitioners during these three days period.

Be that as it may, the fact of the case would reveal that after the process was issued under Section 82 of the Code these petitioners approached this court by filing anticipatory bail application being Cr. Misc. No. 26275/2017 and Cr. Misc. No. 37864/2017. The records of these two cases are available with this court and a perusal thereof would show that vide order dated 21.07.2017 passed in Cr. Misc. No. 26275/2017, a learned co-ordinate Bench of this court while fixing the case on 24.07.2017 passed an interim order directing that "till then, no coercive step shall be taken against the petitioners and in connection with Industrial P.S. Case No. 01/2017...". Later on, in course of hearing of criminal miscellaneous applications for anticipatory bail a question arose for consideration before the learned co-ordinate Bench



at the instance of learned counsel representing the informant as to whether in the facts of the present case where process under Section 82 of the Code has already been issued the anticipatory bail application may be maintained by these petitioners.

In order to get rid of the objections raised on behalf of the informant the petitioners have filed this writ application with a prayer to issue a writ in the nature of certiorari to quash the impugned order dated 06.01.2017 and 24.01.2017 passed by learned Smt. Smita Raj, 1st Class Judicial Magistrate, Vaishali as contained in Annexure-2 and 3 to the present petition, whereby warrant of arrest and process of attachment respectively were issued against the petitioners.

Both the parties have made elaborate argument before this court. Learned counsel for the petitioners and the informant are however unanimous as to the stage of the present proceeding where the process under Section 82 has only been issued. In course of argument, it has emerged as an admitted position that till date these petitioners have not been declared proclaimed offenders in terms of section 83 of the Code.



Learned counsel for the informant has however attempted to impress upon this court relying upon the judgment in the case of **Kamakhya Narayan Singh Vs. State of Bihar** and another reported in **2017(4) PLJR 576**; wherein this court has upon taking note of the constitution bench judgment of Hon'ble Supreme Court in the case of **Gurbaksh Singh Sibbia vs. State of Punjab** reported in **(1980)2 SCC 585** and another judgment in the case of **Lavesh Vs. State (NCT of Delhi)** reported in **(2012) 8 SCC 730**; as also the judgment of the Hon'ble Jharkhand High Court in the case of **Sheikh Anwar @ Sk. Anwar vs. State of Jharkhand** since reported in **2014(4) JLR 128**; took a view that the anticipatory bail application preferred by the petitioners in the said case would not be fit to be entertained once process under Section 82 and 83 of the Cr.P.C. have been issued by the learned Magistrate.

Learned counsel for the petitioners has relied upon a judgment of the Hon'ble Delhi High Court in the case of **Deepak Kumar @ Deepak Saha Vs. State** in Crl. MC 4703/2014 decided on 7th February 2017 whereunder in a case of proclaimed offender the anticipatory bail was granted and noticing that the petitioners in the said case had joined



investigation pursuant to grant of anticipatory bail it was held that the purpose of the proceedings under Section 82 and 83 Cr.P.C. had already been made.

Having heard learned counsel for the petitioners and learned counsel representing the State as also learned counsel representing the informant, this court is of the considered opinion that the objection taken on behalf of the informant, if any, on the ground that the anticipatory bail application cannot be considered by the court in view of the issuance of process of attachment under Section 82 Cr.P.C. is wholly misconceived.

The judgment of the Hon'ble Apex Court which have been taken note of by this court in the case of **Kamakhya Narayan Singh (supra)** have been rendered in a case where the accused was declared a proclaimed offender as process under Section 83 Cr.P.C. was also issued in the said case. In none of those cases which have been taken note of by this court, the accused were still at the stage of Section 82 Cr.P.C. as is the present case.

In view of the arguments made on behalf of the parties and what have been finally culled out from those



arguments, this court is not required to go into the legality and validity of the order dated 06.01.2017 and 24.01.2017 by which the warrant of arrest and the process of attachment under Section 82 Cr.P.C. were issued against the petitioners. The facts being very simple that these petitioners are not proclaimed offenders, the plea taken on behalf of the informant which has necessitated filing of the present writ application seems to be misconceived and not supported by the judicial pronouncements.

The writ application stands disposed off with the aforesaid observations holding and rendering the present writ application infructuous on the above ground.

In view of the disposal of the present writ application, let Cr. Misc. No. 26275/2017 and Cr. Misc. 37864/2017 be listed before appropriate Bench after seeking permission of Hon’ble the Chief Justice.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
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