

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1485 of 2018
Arising out of Darbhanga Sadar Mahila P.S. Case No.08/18, District-
Darbhangha

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Md. Kalimullah @ Tabrez, Son of Hamiduzzoha, resident of Mohalla-Maulaganj, Ward No. 28, Police Station- Laheriasarai, District- Darbhanga.
..... Petitioner/s

Versus

1. The State of Bihar, through the Senior Superintendent of Police, Darbhanga.
2. Ananta Kumari, A.S.I.-cum-Investigation Officer, Sadar Mahila Thana, Darbhanga.

..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. M.S.Hoda, Adv.
For the State : Mr. Utsav Kumar, AC to GA-4
For Intervener/opposite Party No.3: Mr. Kedar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN
PRASAD

ORAL ORDER

3 26-06-2018 Today an application under Chapter XXI-C Rule 5 of the Patna High Court Rules has been filed on behalf of the victim-informant with a prayer to implead her as intervener-opposite party in the present case.

Prayer is allowed. Let the intervener-informant be added as respondent no.3 in the writ application.

It appears that the writ application has been preferred with a limited prayer for setting aside the order dated 04.04.2018 passed by learned S.D.J.M, Darbhanga, by which non-bailable warrant of arrest has been issued against the petitioner in connection with Sadar Darbhanga Mahila P.S.Case No.8 of 2018



registered under Sections 448(A)/376/506 of the I.P.C, later on Section 498(A) of I.P.C has also been added. Petitioner has also prayed for quashing the order dated 26.04.2018 by which process under Sections 82 and 83 of the Code of Criminal Procedure has been issued against him. Since after passing of the order dated 26.04.2018, on an application preferred by the petitioner before the learned S.D.J.M., the said order was stayed for a period of 15 days but later on order staying the process under Sections 82 and 83 has been recalled vide order dated 28.05.2018, the petitioner has challenged the said order in the present writ application. Earlier vide order dated 06.06.2018 passed by a learned Co-ordinate Bench of this Court process under Sections 82 and 83 of the Code of Criminal Procedure has been ordered to be kept in abeyance till today.

At the outset learned counsel representing the petitioner submits that, at this stage, he is moving this application only for a limited purpose i.e., till the date of hearing on his application of anticipatory bail by the learned Sessions Judge, Darbhanga, no coercive action be taken against him pursuant to the issuance of non-bailable warrant of arrest and the process under Sections 82 and 83 Cr.P.C. In course of argument, learned counsel has expressed his apprehension that because of the



issuance of process under Sections 82 and 83 Cr.P.C his anticipatory bail application may not be entertained by the learned Sessions Judge.

Learned counsel representing the State submits that petitioner is evading his arrest in the present case by concealing himself and, therefore, issuance of process under Sections 82 and 83 by the learned S.D.J.M is in accordance with law. It is also submitted that the case against the petitioner has been found true.

Learned counsel representing the informant (respondent no.3) also joins the learned counsel representing the State in his submission and submits that the petitioner is not entitled to get any protection after issuance of process under Section 82 and 83 Cr.P.C.

Learned counsel for the petitioner has filed a supplementary affidavit today enclosing the entire order-sheets of the anticipatory bail application, a perusal of the same shows that on 03.04.2018 the anticipatory bail application was filed in the Court of learned Sessions Judge, Darbhanga, it was heard on 04.04.2018 and after hearing the parties the learned Sessions Judge, Darbhanga, called for the case diary for further consideration and the matter was adjourned to 11.04.2018, thereafter on 20th April, 2018, the order-sheet shows that the



matter was listed before the In-Charge Court because the Presiding Officer was on leave. The case was adjourned on 11.04.2018 and on 20th April, 2018, however, it was adjourned on the request of learned counsel representing the petitioner. The case was fixed for hearing on 05.05.2018. On 05.05.2018 on the request of learned Public Prosecutor the case was fixed for hearing on 17.05.2018. On 17.05.2018 again on the request of learned Public Prosecutor the matter was fixed on 25.05.2018 for hearing. On 25.05.2018 once again it has been adjourned to 21.06.2018. Learned counsel for the petitioner has informed this Court that on 21.06.2018 on the request of learned Public Prosecutor time was granted and now the case is fixed for hearing on 09th July, 2018.

Learned counsel for the petitioner has expressed his apprehension that because of the issuance of process under Sections 82 and 83 Cr.P.C., the bail application of the petitioner may not be entertained, however, the apprehension of the petitioner has no basis to stand and cannot be accepted by this Court as no such plea has been taken on behalf of the State in the present case. This Court also finds that the anticipatory bail application was filed on 03.04.2018 whereas, the process under Sections 82 and 83 has been issued only on 26.04.2018 i.e., during the pendency of the anticipatory bail application. This Court is



also satisfied from the materials available on the record that the Investigating Officer was fully aware of the pendency of the anticipatory bail application but a prayer was made for issuance of process under Sections 82 and 83 Cr.P.C. The learned S.D.J.M had himself granted stay of order issuing process vide his order dated 27.04.2018. Since the petitioner has been able to demonstrate his bona-fide in pursuing his remedy by filing an anticipatory bail application in which case diary was called for by the learned Sessions Judge on 04.04.2018, this Court is of the considered opinion that the execution of process under Sections 82 and 83 of the Cr.P.C should be kept in abeyance till 09th July, 2018 when the anticipatory bail application of the petitioner is likely to be heard by the learned Sessions Judge, Darbhanga.

Learned counsel for the petitioner undertakes that no further adjournment shall be made on the said date in the anticipatory bail application, so is stand of the State in course of submissions before this Court.

Learned Sessions Judge, Darbhanga, is expected to dispose of the anticipatory bail application of the petitioner on its own merit and in accordance with law without being prejudiced by the fact that process under Sections 82 and 83 of the Cr.P.C has been issued against him.



The writ application stands disposed of with the observations and directions made above.

(Rajeev Ranjan Prasad, J)

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