

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43793 of 2018

Arising Out of PS.Case No. -125 Year- 2018 Thana -SALIMPUR District- PATNA

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1. Bachchi Devi Wife of late Bakhori Sao
2. Tunni Devi@ Nirmala Devi Daughter of late Bakhbori Sao Both
Resident of Village Bihta, P.S. Salimpur, District Patna.

.... Petitioners

Versus

The State of Bihar

.... Opposite Party

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with

Criminal Miscellaneous No.45259 of 2018

Arising Out of PS.Case No. -125 Year- 2018 Thana -SALIMPUR District- PATNA

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1. RAVI KUMAR @ SANJEEV KUMAR @ SANJEEV son of Late
Bakhori Sao resident of village Bihta, P.S. Salimpur, District - Patna.
2. Amit Kumar son of Late Anil Kumar resident of mohalla Rajeev Nagar
Patna, P.S. Rajeev Nagar, District Patna.

.... Petitioners

Versus

The State of Bihar.

.... Opposite Party

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Appearance :

(In both the cases)

For the Petitioner/s	:	Mr. Ajay Kumar Thakur with Mr. Pravin Kumar, Advocates
For the Opposite Party/s	:	Mr. Gautam Kejriwal with M/S Atal Bihari Pandey, Rajiv Pathak Alok Kumar Jha, Advocates

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

6 12-09-2018 Since both the cases arise out of the same P.S.case number, they have been heard together and are being disposed of by this common order.

Petitioners in both the cases apprehend their arrest in connection with Salimpur P.S.Case No. 125 of 2018 registered for the offences punishable under Sections 304B, 302 and 120B/34 of the Indian Penal Code.

At the very outset, learned counsel for the informant has

submitted that in this case process under Sections 82 and 83 of Cr.P.C. has already been exhausted and petitioners have been declared absconder and as such this anticipatory bail application is not maintainable in view of law laid down by Hon'ble Apex Court.

On the other hand, learned counsel for the petitioners has submitted that till date petitioners have not been declared absconder as per Section 82(4) of Cr.P.C., which runs as follows :
Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect and as such it cannot be said that petitioners are proclaimed offender and absconder in terms of Section 82(4) of Cr.P.C. Further submission is that petitioners are pursuing their legal remedy of anticipatory bail before this Court and during that period they cannot be declared as absconder. Learned counsel for the petitioners has also relied upon a decision in the case of **Jayendra Vishnu Thakur v. State of Maharashtra**, reported in **(2009) 7 SCC 104** but that is on another point and relates to the effective duration.

On the other hand, learned counsel for the informant has



relied upon a judgment of Hon'ble Apex Court in the case of **Lavesh vs. NCT of Delhi**, reported in (2012) 8 SCC 730 and in the case of **State of Madhya Pradesh vs. Pradeep Sharma**, reported in (2014) 2 SCC 171 and submitted that once process under Section 82 Cr.P.C. has been issued, anticipatory bail application is not maintainable and further submitted that in this case non-bailable warrant has been issued in May, 2018, whereas process under Section 82 Cr.P.C. was issued on 13.6.2018 and on 19.6.2018 process under Section 83 Cr.P.C. was issued and both the processes have been exhausted and as such prayer for anticipatory bail is not entertainable.

In view of above rival submissions, the question arises in this case is as to whether an anticipatory bail application can be maintainable once process under Section 82 Cr.P.C. has been issued.

Having heard both sides and from perusal of the decisions cited by learned counsel for the informant it appears that Hon'ble Apex Court in paragraph-12 of the decision in the case of **Lavesh (supra)** has held as follows :

“ 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.”



Again the same view was taken by Hon'ble Apex Court in the case of State of Madhya Pradesh vs. Pradeep Sharma (supra) and held as follows :

“It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail.”

In view of the discussions made above, it is now well settled that once process under Section 82 Cr.P.C. has been issued anticipatory bail application is not maintainable and in the present case, as per submission of learned counsel for the informant, non-bailable warrant of arrest has been issued against the petitioners in May, 2018 and when they have not been arrested process under Section 82 Cr.P.C. has been issued against them on 13.6.2018 and after that process under Section 83 Cr.P.C. has been issued on 19.6.2018 and on 30.7.2018 process under Section 83 Cr.P.C. has already been exhausted and further appears that after issuance of process under Sections 82 and 83 Cr.P.C. application for anticipatory bail has been preferred by the petitioners on 13.6.2018 and as such the aforesaid fact shows that they were not co-operating with the Investigating Officer.

So far submission of learned counsel for the petitioners is that petitioners have not been declared hostile under Section 82(4) of Cr.P.C. is concerned. If petitioners are aggrieved by declaring them absconder and aggrieved by the order under Section 82 Cr.P.C. they ought to have challenged the same under Section 482



Cr.P.C. or in writ jurisdiction but they have not availed the same and directly they have preferred anticipatory bail application, which is not maintainable on the ground that process under Section 82 Cr.P.C. has already been exhausted and moreover in the present case processes both under Sections 82 and 83 Cr.P.C. have already been exhausted.

In that view of the matter, both the applications are dismissed as not maintainable. So far merit of the case is concerned, petitioners are husband and in-laws of the deceased and the case is of dowry death and petitioners are named in the FIR and there is allegation of demand of dowry and torture as well as causing death of the deceased. However, without going into the merit of the case, in view of law laid down by Hon'ble Apex Court, as noticed above, the anticipatory bail applications are not maintainable and hence dismissed. If the petitioners so desire to test the genuineness of the declaration of absconder under Section 82(4) Cr.P.C. they may seek other remedy for that.

(Vinod Kumar Sinha, J)

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