

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8711 of 2019

Arising Out of PS. Case No.-85 Year-2018 Thana- MALAYPUR District- Jamui

ANIL KUMAR SINGH Son of Late Damodar Prasad Singh Resident of
Village - Gadi Katouna, PO- Katouna

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.P.K.Shahi, Sr.Advocate Mr.M.Kr.Choudhary,Advocate
For the Opposite Party/s :		Mr.D.K.Sinha, Sr. Advocate Mr.G.C.Jha, Adv. Mr.R.R.Jha

**CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA**

ORAL ORDER

8 16-07-2019 Hear learned Senior counsel Mr.P.K.Shahi for the
petitioner and learned Senior counsel Mr.Devendra Kumar
Sinha for the informant and the A.P.P. for the State.

The petitioner seeks pre-arrest bial in Malaypur
P.S.Case No.85 of 2018 registered for the offence under
Sections 302, 120(B) of the Indian Penal Code and Section 27
of the Arms Act.

Accusation is that in the evening of 02.12.2018 the
informant Diwakar Singh along with two cousin brother,
namely, Bhushan Singh and Dhananjay Singh @ Babua were
present at his godown situated beside Jhajha-Jamui main road.
At that time Dhananjay Singh was cleaning his motor cycle with



cloth. In the meantime two boys came on motorcycle and at some distance they stopped. Out of which pillion rider remained sitting on the motor cycle keeping in start condition and another miscreant fired from his pistol at Chananjay Singh as a result of which he died and thereafter both boys fled away boarding on the motorcycle raising slogan “Anil Singh zindabad” and the work of Anil Singh was done. It is further alleged that both the miscreants earlier to the occurrence had stayed at the hotel of Nunudeo Singh with Suro Singh and were seen by the family members of the deceased. Reason of this occurrence is that Anil Kumar Singh has encroached the government land for which case has been filed against him in which he suspected that Dhananjay Singh used to assist the complainant regarding land and to that effect earlier to the occurrence he had already proclaimed about dire consequence, if Dhananjay Singh did not leave helping the person regarding land.

Learned counsel appearing on behalf of the petitioner submits that, in fact, at the time of occurrence the petitioner was in Orissa State where he was running two educational institutions but due to grudge and enmity the petitioner has been falsely implicated in this case. Further submission is that while the petitioner had filed the anticipatory bail application



before the court of Additional District & Sessions Judge-2nd, Jamui, on 12.12.2018 but the same was rejected on 22.01.2019 and thereafter petitioner filed present application under Section 438 of Cr.P.C. on 31.01.2019. Further submission is that it would appear from the order sheet of the trial court that the I.O. in haste filed an application on 07.12.2018 for issuance of non-bailable warrant in the court of Chief Judicial Magistrate, Jamui, which was issued. Thereafter on 02.01.2019 the I.O. made prayer for issuance of process under Section 82 of Cr.P.C. against the petitioner and others with contention that they are evading their arrest and then process of Section 82 Cr. P.C. against the petitioner and others were issued and within eight days the I.O. again prayed for issuance of process under Section 83 of Cr.P.C. without waiting 30 days for appearance of the petitioner in court which is required under Sub-section 82(1) of Cr.P.C. The process under Sections 82 and 83 Cr.P.C. are issued against the petitioner and others by the court of the C.J.M., Jamui after filing of A.B.P. No.1621 of 2018 by the petitioner in the Court of Sessions Judge, Jamui. Further submission is that due to dirty village politics petitioner has been falsely implicated in this case.

On the other hand, learned counsel appearing for the



informant submits that processes under Sections 82 & 83 have already been issued against the petitioner. As such, this application for pre-arrest bail of the petitioner is not maintainable placing reliance on the decisions in cases of Bachhi Devi and another vrs. The State of Bihar (Cr.Misc.No.43793 of 2018) and Ravi Kumar and another vrs. The State of Bihar (Cr.Misc. No.45259 of 2018) vide order dated 12.09.2018.

Section 82 Cr.P.C. stipulates proclamation by the Court against person who appears is absconding. Section 82 (1) Cr.P.C. clearly indicates that if the Court has reason to believe that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.”

The perusal of the order sheets of the court of C.J.M., Jamui which is annexed to the supplementary affidavit show that on 02.01.2019 the I.O. prays for issuance of process under Sections 82 Cr. P.C. against the petitioner and five others with contention that they are evading their arrest. Accordingly, on



that very basis process under Section 82 Cr.P.C. was issued on 02.01.2019. But within ten days on 10.01.2019 the I.O. prays for issuance of process under Section 83 Cr.P.C. against the petitioner and others without waiting thirty days for appearance of the petitioner and others, as required under Section 82 (1) of Cr.P.C. and on that basis process under Section 83 Cr.P.C. was issued by the trial court which is against the spirit of provision of Section 82 Cr.P.C.

Having heard both sides and taking into consideration the facts and circumstances of the case, let the petitioner, above named, in the event of his arrest or surrender before the court below within four weeks from today, be released on bail on furnishing bail bond of Rs.10,000/- with two sureties of the like amount each to the satisfaction of the C.J.M., Jamui, in Malaypur P.S. Case No.85 of 2018 subject to the conditions as laid down under Section 438(2) of Cr.P.C.

(Rajendra Kumar Mishra, J)

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