

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41062 of 2019

Arising Out of PS. Case No.-296 Year-2007 Thana- MADHEPURA District- Madhepura

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Pramod Kumar Das @ Pramod Das, son of Late Niro Das, resident of Village - Arajpur, P.S.- Chausa, Distt - Madhepura. At present posting at Gram, Panchayat Bhatrandha, Pramandpur, Ghailarh Prakhand, District - Madhepura.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh, Advocate

For the Opposite Party/s : Mr. Braj Kishore Pd.(APP)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 18-07-2019

Heard the learned advocates for the parties.

2. The petitioner has challenged the order dated 05.03.2018 passed by the learned Additional Chief Judicial Magistrate, III, Madhepura in connection with Madhepura (Ghailad/Ghailarh) P.S. Case No. 296 of 2007 whereby the petitioner has been declared absconder as also the order dated 15.09.2018 passed by the learned Sessions Judge, Madhepura whereby Cr. Revision No. 135 of 2018 preferred by the petitioner against the order of the learned Magistrate declaring the



petitioner to be an absconder, which has been refused.

3. It appears from the records that the petitioner was granted anticipatory bail by a Bench of this Court on 22.05.2008. After the investigation, charge-sheet was submitted whereupon cognizance was taken and charges were framed on 06.08.2010. It further appears that the bail bond of the petitioner was cancelled on 20.08.2010 because no *pairvi* was being done in the case of the petitioner. On the appearance of the petitioner on 14.09.2010 before the Court below, the petitioner was released on bail. Thereafter, no *pairvi* was made after 02.11.2015 and forced by this, the Trial Court cancelled the bail bond of the petitioner on 20.02.2016.

4. Later, it appears that processes under Section 82 and 83 of the Code of Criminal Procedure were initiated and by order dated 05.03.2018, he has been declared absconder.

5. Mr. Jitendra Prasad Singh, learned advocate for the petitioner has submitted that the procedure for



declaring a person absconder under Section 82 of the Code of Criminal Procedure has not at all been complied with. The proclamation and the statement regarding such proclamation which is mandated under Section 82(iii) of the Code of Criminal Procedure has not been followed.

6. The entire order-sheet has been annexed along with the petition. There does not appear to be any proclamation or a declaration by the Court about such proclamation having been made. No public notice also therefore was issued for the petitioner to appear before the Court.

7. The reason for the petitioner leaving *pairvi* in the case is his transfer to a different place. The petitioner, for all this while, before his bail bond was cancelled on two of the occasions, had been regular in appearing before the Court below.

8. Thus, it has been urged that because of the non-compliance of the provisions contained under Sections 82 of the Code of Criminal Procedure, the order



passed by the learned Additional Chief Judicial Magistrate, III, Madhepura as also the revisional order refusing to interfere with the order referred to above is unsustainable in the eyes of law.

9. The records of the case reveal that there has not been any proclamation and declaration by the court in terms of Section 82 of the Code of Criminal Procedure.

10. For non-compliance of the aforesaid provision and for the reasons assigned in the petition for the petitioner not appearing before the Court below, the orders impugned in the present petition are quashed.

11. The petitioner is directed to appear before the Court below where the case is pending, who, on imposing stringent conditions shall release the petitioner on bail on such sureties which the Court would deem it appropriate. The petitioner would be required to give an undertaking before the Court below to his satisfaction to ensure that he does not default in making appearance



before the Court or contest the case thereafter. The direction with respect to recording of evidence under Section 299 of the Code of Criminal Procedure is also set aside.

12. The petition stands allowed with the direction indicated above.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24/07/2019
Transmission Date	24/07/2019

