

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 78939 of 2019**

Arising Out of PS Case No-187 Year-2019 Thana- KONCH District- Gaya

Kapil Yadav @ Kapildeo Yadav, aged about 40 years, Male, Son of Late Deo Lal Yadav, Resident of Village - Pradhana, P.S.- Konch, District - Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Mahendra Prasad Bharti, Advocate
For the State	:	Mr. Dilip Kumar No. 1, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 09-11-2020

The matter has been heard *via* video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. Heard Mr. Mahendra Prasad Bharti, learned counsel for the petitioner and Mr. Dilip Kumar No. 1, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The petitioner apprehends arrest in connection with Konch PS Case No. 187 of 2019 dated 16.06.2019, instituted under Sections 147, 148, 149, 341, 323, 307, 337, 326, 379 and 504 of the Indian Penal Code and 27 of the Arms Act.



4. The allegation against the petitioner is of assault on the nephew of the petitioner and another co-accused is said to have pelted stone on the grandson of the informant resulting in injuries. It was further alleged that another co-accused had also snatched chain from the neck of the informant.

5. Learned counsel for the petitioner submitted that there is land dispute between the parties which is mentioned in the FIR itself and the allegation is concocted. It was submitted that though as per the allegation, the petitioner is said to have opened fire on the temporal region of the nephew of the informant which had caused injury and he had also threatened them not to talk about the disputed land before the villagers, but the nephew of the informant having been examined by the doctor, the injury is lacerated wound 0.5 x 1 cm, caused by hard blunt substance. It was submitted that there has been no allegation of any repeated assault. Learned counsel submitted that the petitioner has no criminal antecedent.

6. Learned APP submitted that the Court below has issued process under Section 82 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') and in that view of the matter, the present application is not maintainable.



7. On such stand taken by learned APP, he was called upon to substantiate his claim and the petitioner was also directed to assist the Court on this issue.

8. Today, learned APP submitted that the proclamation under Section 82(2) of the Code had been pasted on the house of the petitioner and as he had not appeared before the Court, a report was also submitted to the Court. On a further query of the Court that when the law requires that the Court concerned after such return of the information relating to the advertisement calling upon the person to appear before the Court is received by the Court and the person does not appear, the Court has to pass a specific order under Section 82(4) of the Code, pronouncing him a proclaimed offender and make declaration to that effect, which as per the ordersheet brought on record on behalf of the petitioner, does not appear to have been done. On this, learned APP fairly submitted that such proclamation and declaration under Section 82(4) of the Code has not been made by the Court below.

9. Learned counsel for the petitioner, at this juncture, submitted that even with regard to the procedure adopted for issuance of advertisement/proclamation has not been made in accordance with law by the authorities. However, he reiterated that when admittedly there has been no proclamation and



declaration under Section 82(4) of the Code, with regard to the petitioner being an absconder, the objection of learned APP with regard to maintainability of the application cannot be sustained.

10. In the aforesaid background, the Court finds that there is no proclamation and declaration with regard to the petitioner under Section 82(4) of the Code that he is an absconder and, thus, the objection of learned APP cannot be sustained.

11. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the event of arrest or surrender before the Court below within six weeks from today, the petitioner be released on bail upon furnishing bail bonds of Rs. 25,000/- (Twenty Five thousand) with two sureties of the like amount each to the satisfaction of the learned ACJM, IIIrd, Gaya in Konch PS Case No. 187 of 2019, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 and further, (i) that one of the bailors shall be a close relative of the petitioner, (ii) that the petitioner and the bailors shall execute bond and give undertaking before the Court with regard to good behaviour of the petitioner. Any violation of the terms and conditions of the bonds or the undertaking shall lead to cancellation of his bail bonds.



12. The application stands disposed off in the
aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar/Anand Kr.

AFR/NAFR	
U	
T	

