

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18278 of 2019

Arising Out of PS. Case No.-849 Year-2018 Thana- SHASTRINAGAR District- Patna

1. KRISHNA SINGH Son of Late Chandradeo Singh Resident of Yadupati Lane, Banaras Bank Chowk, Police Station-Muzaffarpur Town, District-Muzaffarpur.
2. Lakshmi Devi W/o Sri Krishna Singh Resident of Yadupati Lane, Banaras Bank Chowk, Police Station-Muzaffarpur Town, District-Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 15748 of 2019

Arising Out of PS. Case No.-849 Year-2018 Thana- SHASTRINAGAR District- Patna

SUPRIYA DEVI Wife of Rupesh Kumar Resident of Jairan Bazar, P.S.-
Khagaul, District - Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 18278 of 2019)

For the Petitioner/s : Mr. Mahendra Thakur
Mr. Amit Anand

For the State : Mr. Manoj Kumar

(In CRIMINAL MISCELLANEOUS No. 15748 of 2019)

For the Petitioner/s : Mr. Uday Prasad

For the State : Mr. Mohammed Arif, APP

For the Informant : Mr. Diwakar Yadav

Mr. Shatrughan Pandey

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

CAV ORDER

7 02-11-2021

Heard the learned counsels for the parties.

The petitioners apprehend their arrest for the
offences alleged under Sections 302 and 120(B) of the Indian



Penal Code and Section 27 of the Arms Act, registered in connection with Shastri Nagar P.S.Case No. 849 of 2018.

Dr. Raj Kumar is the informant of the case. He made a *fardbeyan* before the police officer of the Shastri Nagar Police Station that his younger brother Jitendra Kumar, who was a practising lawyer of the Patna High, has been shot by some criminals in front of the office of the Jal Prishad. He also informed that the treatment of Jitendra Kumar is going on in Rajbansi Nagar hospital. The informant, with the assistance of the police, brought Jitendra Kumar in the emergency ward of IGIMS, Patna, where the doctor declared him dead. The alleged occurrence, as per the FIR, is due to some land disputes between the parties. In the later part of the *fardbeyan*, it has been mentioned that the wife of the deceased Nitu Singh, her father Krishna Singh and mother Laxmi Devi (petitioners in Cr. Misc. No.18278/2019) were also involved in the alleged occurrence.

At the very outset, learned APP, assisted by learned counsel for the informant, has raised the question of maintainability of the anticipatory bail applications. He has submitted that against the petitioners process under Section 82 as well Section 83 has been issued. Relying on a recent decision of Hon'ble Supreme Court, rendered in Criminal Appeal No.



1209 of 2021 (*Prem Shankar Prasad Vs. the State of Bihar & Anr.*), learned counsel has submitted that when the process under Sections 82/83 is issued, the anticipatory bail application is not maintainable. Relying upon the judgments of *State of Madhya Pradesh Vs. Pradeep Sharma*, (2014) 2 SCC 171 and *Lavesh Vs. State (NCT of Delhi)*, (2012) 8 SCC 730, the Hon'ble Supreme Court in paragraph 16 has observed as follows:

“16. Recently, in Lavesh v. State (NCT of Delhi) [(2012) 8SCC 730], this Court (of which both of us were parties) considered the scope of granting relief under Section 438 vis-a-vis a person who was declared as an absconder or proclaimed offender in terms of Section 82 of the Code. In para 12, this Court held as under : (SCC p.733)

“12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and 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 is not entitled to the relief of anticipatory bail.

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. Thus the High Court has committed an error in granting anticipatory bail to respondent No.2-accused ignoring the proceedings under Section 82-83 of Cr.P.C.”

Learned APP, assisted by learned counsel for the informant, has further submitted that considering the facts and circumstances, the coordinate Bench has rejected the anticipatory bail application of co-accused *Pansujeet @ Mithun Kumar @ Pansujeet Kumar @ Mithu*, passed in Cr. Misc. No.29323 of 2019 under order dated 17.08.2019. The coordinate bench, relying on the decisions of *State of Madhya Pradesh Vs. Pradeep Sharma*, since reported in (2014) 2 SCC 171 and *Lavesh Vs. State (NCT of Delhi)*, since reported in (2012) 8 SCC 730, dismissed the aforesaid anticipatory bail application as the process under Section 82 of the Code of Criminal Procedure was issued.



In reply, learned counsel(s) for the petitioners have submitted that process under Section 82 was issued in a very hasty manner. The FIR was lodged on 5th December, 2018 and only after five days, non-bailable warrant was issued on 10th December, 2018 and the process under Section 82 Cr.P.C. was issued on 17.12.2018, without giving any cogent reason. The reason given by the learned court below for issuance of process under Section 82 Cr.P.C. was that the case is of very serious nature. Learned counsel has also drew my attention towards two decisions of the coordinate bench. The first has been rendered in Cr. Misc. 37864 of 2017 under judgment dated 16.05.2018 (*Rajan Choudhary @ Rajnath Choudhary vs. The State of Bihar*), whereas the second has rendered in Cr.Misc.No. 8711 of 2019 under order dated 16.07.2019 (*Anil Kumar Singh Vs. The State of Bihar*). In the first decision in Cr. Misc. 37864/2017, it was held that the process only under Section 82 of the Cr.P.C. was issued and not under Section 83 of the Cr.P.C. The coordinate Bench at page six of the said order, quoting a judgment of Hon'ble Supreme Court, has observed as follows:

“The judgment of the Hon'ble Apex Court which have been taken note of by this Court in the case of **Kamakhya Narayan Singh** (*supra*) have been rendered in a case where



the accused was declared a proclaimed offender as process under Section 83 Cr.P.C. was also issued in the said case. In none of those cases which have been taken note of by this court, the accused were still at the stage of Section 82 Cr.P.C. as is the present case.”

The aforesaid judgment passed in Cr. Misc. No.37864 of 2017 reveals that no process under Section 83 Cr.P.C. was issued in that case. That situation cannot be equated in the present case as paragraphs 228, 295 and 296 of the case diary reveal that not only the process under Section 82, but also the process under Section 83 Cr.P.C. have been issued.

In the second decision i.e. Cr. Misc. No.8711 of 2019, the learned coordinate Bench has granted anticipatory bail to the accused of that case on the ground that without awaiting a period of 30 days, the process under Section 83 Cr.P.C. was issued.

This is not under consideration before this Bench to scrutinize the legality or illegality of issuance of process under Sections 82 or 83 Cr.P.C. The issue is whether anticipatory bail petition is maintainable or not in a case where the process under Sections 82 and 83 has been issued. As per the ratio laid down in *Prem Shankar Prasad* (supra) if the process under Section 82



Cr.P.C. has been issued, the anticipatory bail is not maintainable.

Considering the facts and circumstances of the case,
both the anticipatory bail applications are dismissed as not
maintainable.

(Nawneet Kumar Pandey, J)

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