

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.307 of 2022

Arising Out of PS. Case No.-813 Year-2019 Thana- TURKAULIYA District- East
Champaran

Ram Nath Tiwari S/o Baban Tiwari R/o village- Barwa, P.S.- Govindganj,
District- East Champaran

... .. Petitioner

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Patna
2. The Dept. of Home through its Principal Secretary, Government of Bihar, Patna
3. The Director General of Police, Bihar
4. The Inspector General of Police, Patna Bihar
5. The Deputy Inspector General of Police, Tirhut Division, Bihar
6. The Superintendent of Police, East Champaran
7. The Officer in Charge of Turkauliya Police Station, East Champaran

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Ravindra Kumar, Advocate
For the Respondent/s : Mr. Md. Irshad, AC to SC-1

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 10-11-2022 Let the counter affidavit be taken on the record.

Having heard Mr. Ravindra Kumar, learned counsel for the petitioner and Mr. Md. Irshad, learned AC to SC-1 for the State, this Court is of the considered opinion that the impugned order issuing process under Section 83 CrPC need not be interfered with by this Court. The fact is that the son of the petitioner is an accused in Turkauliya P.S. Case No. 813 of 2019 registered under Sections 363, 365, 364A, 302, 201, 120B, 414 IPC and Section 35 of the Arms Act. He was facing Sessions Trial No. 618 of 2021 but while in judicial custody he fled away



from the jail hospital and has still not surrendered.

The State has filed a counter affidavit in which it is stated that the learned trial court vide order dated 24.02.2022 has issued process under Section 82 CrPC and thereafter no proceeding under Section 83 CrPC has been initiated. It is further stated that an order to initiate proceeding under Section 83 CrPC was issued on 31.01.2022 but when the record was produced by the office clerk on 24.02.2022 for signing the order by the learned trial judge, it was found in course of perusal of the record that against application dated 31.01.2022 filed by the prosecution it was ordered to issue process under Section 83 CrPC against the accused Nitesh Kumar Tiwari who was absconding from judicial custody. Record also shows that after issuing NBW, process under Section 82 CrPC was not issued against the said accused in ordinary course of action, under such circumstances, the court has issued process under Section 82 CrPC and office has been directed to issue process. It is stated in paragraph '11' that no process under Section 83 CrPC has been initiated by the learned trial court.

Learned counsel for the petitioner submits that Section 82 CrPC process has been issued against the family properties in which the petitioner has got his own share and he



is likely to be affected by the process under Section 82 CrPC even though he is not wanted in the case and cannot be held vicariously liable for the offences, if any, committed by his son.

Learned counsel for the State submits that in such circumstance, it is open for the petitioner to move an appropriate application in the learned court below to show his bonafides and an appropriate prayer may be made in the court to the fact that the process under Section 82 CrPC may not be given effect to in respect to the self-acquired properties of the petitioner.

Having heard learned counsel for the petitioner and the State, this Court is of the considered opinion that the petitioner may, if so advised, move the learned court below for appropriate relief including that for non-execution of Section 82 CrPC process against his individual/self-acquired properties. If any such application is filed within 30 days from today, the same will be considered by the learned court below on its own merit and in accordance with law as expeditiously as possible.

This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

