

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30572 of 2021

Arising Out of PS. Case No.-264 Year-2020 Thana- CHERIYA BARIYARPUR District-
Begusarai

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1. DAULAT DEVI W/O RAMNANDAN MAHTO, R/O VILLAGE-KHANJIHAPUR WARD NO.7, P.S.-CHERIABARIYARPUR, DISTRICT-BEGUSARAI.
 2. KHUSHBU DEVI W/O SONU KUMAR, R/O VILLAGE-KHANJIHAPUR WARD NO.7, P.S.-CHERIABARIYARPUR, DISTRICT-BEGUSARAI.
 3. ARTI DEVI @ USHAKUMARI W/O MUKESH KUMAR MAHTO, R/O VILLAGE-KHANJIHAPUR WARD NO.7, P.S.-CHERIABARIYARPUR, DISTRICT-BEGUSARAI.
 4. RINKU DEVI W/O RAJESH MAHTO, R/O VILLAGE-KHANJIHAPUR WARD NO.7, P.S.-CHERIABARIYARPUR, DISTRICT-BEGUSARAI.

... .. Petitioner/s

Versus

THE STATE OF BIHAR.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Shubhesh Pandey
		Mr. Murlidhar Mishra
For the Opposite Party/s	:	Mr. Ashok Kumar

CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV ORDER

4 16-05-2022 The learned counsel for the petitioners is directed to
remove all the defects pointed out by the office within one month.

I have already heard the learned counsel for the petitioners as well as the learned Additional Public Prosecutor for the State.

The petitioners apprehend their arrest in connection with Cheriabariyarpur P.S. Case No. 264 of 2020 (GR. No. 379 of 2020) registered for offence punishable under sections 341, 323, 302/34 of the Indian Penal Code.

As per allegation, the accused persons named in the



FIR, including the petitioners committed murder of the informant's father by inflicting bricks on his chest, head, etc.

The learned Additional Public Prosecutor has submitted that already the process under section 83 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') has been promulgated, as such, the petitioners are not entitled to the privileges of anticipatory bail. In support of his submissions, the learned Additional Public Prosecutor has relied upon a decision of Hon'ble Supreme Court, reported in *AIR 2021 SC 5125, Prem Shankar Prasad vs. the State of Bihar and another*. The Hon'ble Supreme Court, in paragraph No. 7.3 of the above-noted decision, has observed as follows:

"7.3 ...Recently, in Lavesb v. State (NCT of Delhi) [(2012) 8 SCC 730], this Court, (of which both of us were parties) considered the scope of granting relief under Section 438 vis-à-vis to 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 was 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 he 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.”

The learned counsel for the petitioners has submitted that the Hon’ble coordinate Bench of this Court, after considering the above-noted decision of the Hon’ble Supreme Court, has been pleased to quote that merely the process under section 82 or 83 of the Code has been issued, it cannot be said that the anticipatory bail petition is not entertainable.

The coordinate Bench, vide order dated 15.12.2021 in Cr. Misc. No. 1118 of 2021, has held as follows:

“Having discussed the case laws which have been placed before this Court, this Court is of the considered opinion that this case stands on a completely different footing and that unprecedented situation of COVID -19 cannot be forgotten. The entire country was under lock down and in such



circumstances if the application of the petitioners remained pending with this Court and during the pendency they have been declared absconder by the learned court below, in the considered opinion of this Court, the petitioners cannot be ousted on this ground alone.”

It appears that the coordinate Bench has considered the unprecedented situation of Covid-19 and in these circumstances, that order was passed. Further, the coordinate Bench has been pleased to hold as follows:

“The order of the learned court below which has been placed before this Court is based on a bald statement of the Investigating Officer as there is no entry in the case diary that during the period discussed above the Investigating Officer had either given any notice to the accused petitioners to participate in the investigation or had visited their place of residence to interrogate them.”

From perusal of the order of the coordinate Bench, it appears that the I.O. of that case had not visited the place of residence to interrogate the accused persons nor he issued any notice to the accused petitioners to participate in the investigation. The I.O. mechanically made a prayer to the court below in that case for issuance of the process under section 82 of the Code.

In the instant case, it has not been submitted on behalf of the petitioners that the I.O. had not visited the residence of the accused persons for interrogation, even there is nothing on the



record to substantiate these facts. Moreover the order, whereby the petitioners were declared proclaimed offender, has not been challenged and it has become final. When that order is still unchallenged, the illegality or error of that order cannot be gone into. The petitioners are the proclaimed offender and the process under section 83 of the Code has also been issued against them, as such, in the light of the decision of the Hon'ble Supreme Court in Prem Shankar Prasad's case (supra), they are not entitled to the privileges of anticipatory bail. Accordingly, their prayer for anticipatory bail is hereby rejected.

Office shall ensure that all defects are removed by the petitioners within the stipulated time mentioned hereinabove, failing which, the matter shall be brought to the notice of this Court.

(Nawneet Kumar Pandey, J)

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