

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48055 of 2021

Arising Out of PS. Case No.-72 Year-2021 Thana- ASHOK PAPER MILL District-
Darbhanga

Sanjay Choudhary, Son of Suresh Choudhary, Resident of Village -
Makhanpur, P.S.- Ashok Paper Mill, Distt.- Darbhanga.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner : Mr. Pankaj Kumar Das, Advocate

For the Opposite Party : Dr. (Mrs.) Indihar Kumari, APP

For the informant : Mr. Bibhuti Narayan, Advocate

Mr. Ashok Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

6 01-12-2022

In this case, the petitioner is seeking anticipatory bail in connection with Ashok Paper Mill P.S. Case No.72 of 2021 registered for the offence punishable under Sections 341, 323, 324, 354(A), 379, 307, 504 and 506/34 of the Indian Penal Code.

The present F.I.R. has been lodged on the basis of *fardbeyan* of the informant - Raghav Choudhary alleging *inter alia* that on 03.06.2021 at about 8:30 P.M. while he was returning to his house after taking '*prasad*' of Satya Narayan Puja, all the accused persons came with various weapons like axe, *farsa* and bamboo stick and assaulted the informant. Petitioner - Sanjay Choudhary is said to have assaulted the informant with axe. It is also alleged that when the family



members of the informant tried to save him, they were also assaulted by the accused persons.

In this case, learned counsel for the informant has submitted that this bail application is not maintainable in view of the fact that process under Section 82 of the Cr.P.C. has been issued against the petitioner.

I have heard learned counsel for the parties on the point of maintainability of this bail application.

For deciding this issue, a recent decision of this Court rendered in the case of ***Santosh Yadav @ Santosh Kumar Yadav vs. State of Bihar (Criminal Miscellaneous No.38750 of 2021)*** decided on 04.07. 2022 is important. It will be useful to quote relevant portion of this decision, which read as under:-

*“After hearing the learned counsel for the petitioner and learned A.P.P. for the State, the Court comes to a considered conclusion that anticipatory bail application is maintainable even after issuance of process under Section 82 of the Cr.P.C further the Hon’ble Supreme Court in the case of **Gurbaksh Singh Sibbia (Supra)** has very clearly laid that anticipatory bail application is maintainable even after filing of charge-sheet or till the person is not arrested, thereafter another Constitution Bench judgment of the Hon’ble Supreme Court in the case of **Sushila Aggarwal and Others vs State (NCT of***



Delhi) and Another (supra) had also placed reliance on the Gurbaksh Singh Sibbia (Supra). Further from the scheme of Cr.P.C. it prima-facie appears that Section 82 of the Cr.P.C. is resorted to only when an accused is trying to flee from justice and Section 83 Cr.P.C. is an additional provision to create more pressure on the accused to surrender since the provision provides for attachment of property but then the said attachment of property is not final and it is subject to Sections 84, 85 and 86 of the Cr.P.C., as aforesaid, further if on objection the attachment order is recalled then definitely it will be presumed that the petitioner no longer is an absconder because abscondence is a precondition for issuance of an order under Section 83 of the Cr.P.C. thus prima-facie it appears that Sections 82 and 83 are provisions which are provisional in nature and as such a valuable right like personal liberty as enshrined in Article 21 of the Constitution of India cannot be taken away based on a transient provision. The Court is also in agreement with the submission made by the learned counsel for the petitioner that even Section 438 of the Cr.P.C. nowhere bars anticipatory bail application on the ground of issuance of process under Section 82 Cr.P.C. thus the Court holds that anticipatory bail application is maintainable even after issuance of process under Section 82 of the Cr.P.C. though the accused on merits may not be entitled to seek relief based on his conduct



leading to issuance of process under Section 82 but then definitely maintainability of an anticipatory bail application after issuance of process under Section 82 is definitely not barred.”

In view of aforesaid, this Court holds that this anticipatory bail application is maintainable.

Considered the submissions of the parties on merit of the case and also perused the material available on record.

The petitioner is said to have assaulted the informant with axe, as a result of which the informant sustained grievous injury on his parietal region. Hence, this Court is of the opinion that the petitioner does not deserve anticipatory bail.

In such view of the matter, this anticipatory bail application is held maintainable but is dismissed on merits.

(Sandeep Kumar, J)

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