

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45872 of 2022

Arising Out of PS. Case No.-163 Year-2021 Thana- SAHAR District- Bhojpur

MD. EHSAN ALI S/o Md. Liyakat Ali Resident of Abgila, P.S. - Sahar,
District - Bhojpur.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Md. Kalam Khan S/o Md. AZim Resident of Abgila, P.S. - Sahar, District - Bhojpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.N.K. Agrawal, Sr. Adv.
	:	Mr.Binod Kumar Sinha, Adv.
	:	Mr.Kumar Rajdeep, Adv.
For the Opposite Party/s	:	Mr.Vinod Shanker Modi

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

ORAL ORDER

4 30-11-2022 The learned counsel for the petitioner is directed to

remove all the defects pointed out by the Stamp Reporter within

one month.

Heard the learned counsel for the petitioner as well as

the learned counsel for the informant.

The petitioner apprehends his arrest in connection

with Sahar P.S. Case No. 163 of 2021, registered for the

offences punishable under Sections 341, 323, 307, 504, 506 and

34 of the Indian Penal Code and 27 of the Arms Act.

The anticipatory bail petition of the present petitioner

was rejected, vide order dated 02.08.2022 on the ground that



process under Sections 82 and 83 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') was issued. As such, the anticipatory bail petition was not maintainable.

The learned counsel for the petitioner has renewed the prayer for bail of the petitioner on the ground that the learned court below has recalled the order, whereby the process under Section 82 of 'the Code' was issued, vide order dated 30.06.2022. The learned counsel for the petitioner has also submitted that the case of the petitioner is on better footing than that of co-accused, Md. Taiyab Ali, who has been granted anticipatory bail by the co-ordinate Bench. There was allegation against Taiyab Ali that he inflicted *rod* blow on the head of the informant, which is corroborated by the medical evidence. The allegation against the petitioner is of assaulting on the chest of the injured and there is absence of medical report in this respect.

On the other hand, the learned counsel for the informant has opposed the prayer for bail.

The anticipatory bail petition of the present petitioner was rejected. The main ground for rejection of the anticipatory bail was of issuance of process under Section 82 of 'the Code', which has later been recalled by the learned court below.

The learned counsel for the informant has submitted



that the learned court below has no inherent jurisdiction to recall its earlier order, as the criminal court can recall or amend its order, only under Section 362 of 'the Code', which says that only clerical and arithmetical error can be rectified by the court below.

So far as this submission is concerned, the process under Section 82 of 'the Code' was recalled, and that order has not been challenged by the informant, as such, that order has become final.

Considering the fact that the issuance of the process under Section 82 of 'the Code' is not existing till date the rejection of anticipatory bail cannot be based on the sole ground of issuance of process under Section 82 of 'the Code'.

Considering the above-mentioned facts and circumstances and also considering that case of the petitioner is on better footing than that of Taiyab Ali, who has been granted anticipatory bail, let the petitioner, in the event of his arrest or surrender within four weeks before the learned court below, be released on anticipatory bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate-VI, Ara in connection with Sahar P.S. Case No. 163



of 2021, subject to the conditions as laid down under Section 438(2) of ‘the Code’.

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

(Nawneet Kumar Pandey, J)

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