

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3459 of 2021

Arising Out of PS. Case No.-62 Year-2020 Thana- PAHARPUR District- East Champaran

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1. Duggi Ram @ Satandeo, S/O Sakaldhari Ram.
 2. Ranjit @ Ranjit Ram, S/O Duggi Ram @ Satandeo.
 3. Suraj Kumar S/O Ramayan Ram.
All resident of Village- Kamalpipra Ps Paharpur, District-East Champaran.

... .. Petitioners

Versus

The State of Bihar

. Opposite Party

Appearance :

For the Petitioner : Mr. Anil Kumar, Advocate
For the Opposite Party : Mr. Md. Aslam Ansari, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 01-12-2022

In this case, the petitioners are seeking anticipatory bail in connection with Paharpur P.S. Case No.62 of 2020 registered for the offence punishable under Sections 147, 148, 149, 341, 323, 324, 379, 302 and 504 of the Indian Penal Code.

The present F.I.R. has been lodged on the basis of written information of the informant - Arun Ram alleging *inter alia* that on 21.02.2000 at about 8:00 A.M. the petitioners forming unlawful assembly came and started destroying the hut of the informant, which has been built over the land purchased by the father of the informant, and they also assaulted the father of the informant. Ranjit Ram is said to have inflicted *farsa* blow



on the head of the father of the informant. Duggi Ram is said to have pressed the neck of the father of the informant and other accused persons also assaulted him. It is also alleged that when the informant tried to save his father, he was assaulted by Ramayan Ram, who inflicted *farsa* blow which resulted in serious injuries in the hand of the informant. Other family members of the informant were also assaulted by the accused persons including these petitioners. It is further alleged that the petitioners entered into the house of the informant and taken away a box containing ornaments and other articles worth Rs.80,000/- On account of injuries, the father of the informant became unconscious and therefore, he was taken to the hospital but he succumbed to death.

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 petitioners.

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.

This is a case under section 302 of the Indian Penal Code. As the allegations against the petitioners are specific and serious in nature, they do 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)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	22.12.2022
Transmission Date	

