

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59674 of 2021

Arising Out of PS. Case No.-67 Year-2021 Thana- NARDIGANJ District- Nawada

RAM KRIPAL YADAV S/o Late Ram Prasad Yadav Resident of Village-
Selra, P.S.- Jaynagar, District- Madhubani. A/p- Sub- Inspector of Police Cum
S.H.O. Nardiganj, P.S.- Nardiganj, Dist.- Nawada.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 60066 of 2021

Arising Out of PS. Case No.-67 Year-2021 Thana- NARDIGANJ District- Nawada

1. MADAN KUMAR SINGH Son of Dinanath Singh Resident of Village -
Dhamdiha, P.S.- Koilwar, Distt.- Bhojpur , Ara. The Petitioner no.1 posted
and Working as S.I. of Police and The Petitioner no.2 Posted and Working as
A.S.I. of Police of Nardiganj Police Station, Distt.- Nawada.
2. Barelal Yadav Son of Jhakar Yadav Resident of Village - V.s. Mills,
Gopalganj, Dewapur Asraut, P.S.- and Distt.- Gopalganj. The Petitioner no.1
posted and Working as S.I. of Police and The Petitioner no.2 Posted and
Working as A.S.I. of Police of Nardiganj Police Station, Distt.- Nawada.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 59674 of 2021)

For the Petitioner/s : Mr. Rajesh Kumar Singh, Sr. Adv.
Mr. Ravi Prakash, Adv.
Mr. Manish Kumar Singh, Adv.

For the Informant : Mr. Sidhendra Narayan Singh, Adv.

(In CRIMINAL MISCELLANEOUS No. 60066 of 2021)

For the Petitioner/s : Mr.Md. Anisur Rahman, Adv.

For the Opposite Party/s : Mr.Nirmala Kumari, APP

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

CAV ORDER

6 20-09-2022 Learned counsel for the petitioners is directed to
remove all the defects pointed out by the Stamp Reporter



within one month.

I have already heard the learned counsel for the petitioners as well as the learned Addl.P.P. for the State and the learned counsel for the informant.

The petitioners apprehend their arrest in connection with Nardiganj P.S. Case No. 67 of 2021, registered for the offences punishable under Sections 341, 323, 354, 379, 504, 427 of the Indian Penal Code.

The prosecution case in brief is that informant Ajit Kumar @ Guddu gave his written report to SHO of Nardiganj on 13.04.2021 with allegation that on 03.08.2020 his mother Pramila Sharma was returning after offering pooja in Pahadi Mandir. Her vehicle became uncontrolled and due to skid it fell into a ditch but neither his mother nor the driver of the vehicle suffered any kind of injury. Meanwhile, two persons came there by a motorcycle and they apprised themselves as SHO and dafadar of the police station and they asked the informant to bring that vehicle in police station, when the informant asked the petitioner Ram Kripal Yadav (was SHO at that time) as to why he wanted the vehicle to be brought in the police station. He demanded Rs. 10,000/- for ending the matter. When the informant denied they abused him and threatened him to



falsely implicate in cases. On 5.8.2020, the informant came to know that the petitioner Ram Kripal Yadav has registered a false case against the informant and his brothers which was registered as Nardiganj P.S. Case No. 175/2020, after concocting false injury reports given by Primary Health Centre, Nardiganj. The informant made complaints in writing to District Magistrate, Superintendent of Police and Chief Medical Officer of Nawada and also to I.G., Gaya and D.G.P. Bihar through e-mail and registered post.

Thereafter, all of sudden on 11.08.2020 in early morning at about 3.15 a.m., petitioner Ram Kripal Yadav along with police personnel including the petitioners and police force about hundred in number surrounded the house of the informant and they forcibly opened the door of his house and entered therein. The petitioner Barelal Yadav attacked father of the informant with intention to kill. The police personnel ransacked the entire house of the informant and damaged the valuable articles including his TV, washing machine, AC etc. Co-accused Chandramauli who was dafadar snatched Rs. 15,000/- from the pocket of the informant's father and also snatched golden chain from neck of mother of the informant. Petitioner Barelal Yadav assaulted the informant with butt of



gun and petitioner Ramkripal Yadav assaulted him with butt of pistol and dragged him out from his house. Petitioner Madan Kumar Singh assaulted the informant with *lathi* and butt of pistol. Thereafter, the police party forcibly brought the informant to police station where petitioner Ram Kripal Yadav assaulted on the face and chest of the informant by his legs and after snatching a rifle from the hands of police personnel petitioner Barelal Yadav assaulted on his chest. Petitioner Ram Kripal Yadav snatched Rs. 76,000/- and an ATM from his possession.

At the very outset, the learned counsel for the informant has stated that the process under sections 82 and 83 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') has been issued against the petitioners in this case and in the light of recent decision of Hon'ble Apex Court, the petitioners are not entitled to the privileges of anticipatory bail. In support of his submissions the learned counsel for the informant and the learned Additional Public Prosecutor have relied upon a recent 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."

On the other hand, the learned counsel for the petitioners has submitted that merely because process under Section 82 has been issued it does not make disentitled the petitioner from getting the benefit of anticipatory bail. On behalf of the petitioners some decisions of other high courts have been relied on.

The first decision of single judge of Allahabad High Court, *Criminal Misc Anticipatory Bail Application u/s 438 Cr.P.C. No. 4645 of 2022 dated 14.07.2022*. The relevant portion of that decision is being quoted hereinbelow:-

*"9. This Court in re: **Vinod Kumar Singh @ Vinod Singh vs. State of U.P. in Case No. 5195 of 2021** vide order dated 10.12.2021 was pleased to set aside the proclamation issued u/s 82 Cr.P.C. for the reason that before seeking proclamation u/s 82 Cr.P.C. the investigating officer has not taken prior steps and has not filed such application before the learned court below on affidavit. Therefore, in the aforesaid case the direction was issued to Director General of Police, U.P.*



to issue appropriate circular fixing guidelines to the effect that the investigating officer shall file affidavit before the court concerned apprising that he has taken all necessary steps seeking cooperation of the accused but the accused is not cooperating with the investigation.

10. In the present case no such affidavit has been filed by the Investigating Officer and no material was shown to the court-below to convince that before issuing proclamation all prior necessary measures have been adopted by the Investigating officer concerned."

The second decision also of a single judge of High Court of Madhya Pradesh Bench at Gwalior, *Balveer Singh Bundela Vs. State of Madhya Pradesh, Miscellaneous Criminal Case No. 5621 of 2020* wherein it has been held that anticipatory bail petition is maintainable even after filing of the chargesheet and also after issuance of the process under Section 82 of the Code.

Similar view has been taken by a single judge of High Court of Punjab and Haryana at Chandigarh in *CRM-M-3052-2022, Mamta Giri Vs. State of U.T. Chandigarh.*

In my view, before passing an order under Section 82 of 'the Code', two ingredients must be fulfilled. First ingredient



is that the Court has reason to believe that the person has absconded or is concealing himself and second ingredient is that a warrant must have been issued against that person. Section 82 of 'the Code' is being quoted herinbelow:-

“82. Proclamation for person absconding.-(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:-

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court- house;



- (ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.
- (3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.
- (4) Where a proclamation published under Sub-Section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.
- (5) The provisions of sub-sections (2) and (3) shall



apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).”

From bare perusal of this section, it transpires that the reason of satisfaction of the Magistrate is not required to be recorded in writing. What is required is that the Magistrate has reason to believe that the accused person was absconding or concealing himself and a warrant has already been issued against him.

Now it has to be seen whether a person who is declared absconder is entitled for anticipatory bail or not? If a person is declared absconder under section 82 of ‘the Code’, it means that the court which declared him as absconder has reason to believe that he has absconded or is concealing himself. There are two ingredients or pre-requisites of declaring an accused as an absconder. First ingredient is that a warrant should have been issued against that person and second, the Court must be of the opinion that the accused has absconded or is concealing himself.

The order under section 82 of ‘the Code’ is a judicial order pronounced by a court of competent jurisdiction. When the order is passed under section 82 of ‘the Code’ by a court of



competent jurisdiction, it means that the court was of the opinion that the accused was concealing himself or absconding. Until or unless this order is set aside by the superior court, there is presumption that the person against whom the process under section 82 of 'the Code' has been issued, is concealing himself or absconding. Though the order is transitory in nature and subservient to provisions under sections 83, 84, 85 and 86 of 'the Code' even then its judicial sanctity is not indefeasible unless it is judicially reviewed by the superior authorities in hierarchy. Section 438 of 'the Code' provides a statutory right to a person who has reason to believe that he may be arrested on accusation of having committed a non-bailable offence to file petition for his pre-arrest bail, before the High Court or the Court of Session. A person, who is fleeing away from justice and has been declared as absconder by a judicial order promulgated by a competent court, how can he say that there is apprehension of his arrest, without making himself available to the process of justice. In my view, he is certainly not entitled for anticipatory bail. He is under obligation to make himself available to the authority where his appearance is required and bypassing that authority if he comes before the superior court with a prayer of anticipatory bail, he is not entitled for that. In



my view, he should submit himself to the court/authority where his presence is required. The petitioners instead of making themselves available before the learned court below or before the investigating authorities, they want a protective blanket of anticipatory bail over their head, which cannot and should not be given.

Now it is pertinent to mention here the some repercussions which arise due to absconding of an accused which affects the administration of criminal justice system. Normally it is seen that when more than one persons are accused in a case and during investigation one or more accused persons are absconding, the investigating officer generally submits report under Section 173 of 'the Code' against the appearing accused persons, splitting the case of absconding accused persons. The appearing accused persons are put on trial and the trial comes to the logical conclusion. Thereafter when the absconding accused is apprehended again police report is submitted and again he faces trial. As such, the consequence of absconding of the accused results into multiplicity of cases, which burdens the docket of the court which is already under pressure of docket explosion. The situation becomes more severe, predicamentary and



paradoxical when the dichotomy arises before a court when in the first trial the witnesses support the prosecution case and in subsequent trial arisen out of the same case the same witnesses would turn hostile. Similar situation arose before the Hon'ble Jharkhand High Court in case of *Gagan Thakur vs. State of Jharkhand and others*, reported in 2004 (2) Cr.L.J. page 1910, the relevant portion of paragraph 7 of that case is being extracted hereinbelow:-

“The splitting up of cases leave scope for many splittings, depending upon the number and will of absconders. This is, thus, a misuse of process of Court manipulated by absconders and can tend to failure of justice or its miscarriage. To illustrate, I found that in Cr Appeal No. 1431/03, the main case was split up. The informant appeared at trial and said that he identified two dacoits and took their names (one of the two was absconder and the one was facing trial) and when the case of absconding accused was committed and he was put on trial, the same witness said he had identified none. Such are likely to be the ill-effect of splitting up.”

In Special Leave Petition (Criminal) No. 7358 of 2021,



Sanatan Pandey Versus State of Uttar Pradesh and another, in a recent decision where an accused against whom the process under section 82 of 'the Code' was issued, approached for anticipatory bail, the Hon'ble Supreme Court observed as follows:-

“The Court shall not come to the rescue or help the accused who is not cooperating the investigating agency and absconding and against whom not only non-bailable warrant has been issued but also the proclamation under Section 82 Cr. P.C. has been issued.”

It has been argued on behalf of the petitioners that anticipatory bail petition was filed before issuance of process under section 82 of 'the Code'. In this respect, my humble view is that the above-mentioned decisions of Hon'ble Supreme Court in the case of *Lavesh v. State (NCT of Delhi)* (*supra*) and in the case of *Prem Shankar Prasad vs. the State of Bihar and another* (*supra*) does not make any distinction whether anticipatory bail petition is filed before or after passing of order under section 82 of 'the Code'. Merely because the petitioners have preferred anticipatory bail petition prior to order passed under section 82 of 'the Code', it does not



ipso facto make them entitled to the privileges for anticipatory bail.

On the above-mentioned observations, the petitioners are not entitled for privileges of anticipatory bail. Accordingly, it is rejected.

Office shall ensure that all defects are removed by the petitioner within the stipulated time provided in para-1 hereinabove, failing which the matter shall be brought to the notice of this Court.

(Nawneet Kumar Pandey, J)

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