

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10392 of 2021**

Arising Out of PS. Case No.-186 Year-2020 Thana- VIDYAPATINAGAR District-
Samastipur

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PINTU THAKUR SON OF RAM DULAR THAKUR @ CHETU THAKUR
@ RAM KUMAR THAKUR, RESIDENT OF VILLAGE KALYANPUR
BASTI WARD NO 11, P.S.- MOHIUDDIN NAGAR, DISTRICT-
SAMASTIPUR.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Apurva Kumar

For the Opposite Party/s : Mr.

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

CAV ORDER

7 18-04-2022 The learned counsel for the petitioner is directed to

remove all the defects pointed out by the office within one

month.

I have already heard the learned counsel for the

petitioner as well as the learned Additional Public Prosecutor for

the State.

The petitioner apprehends his arrest in connection

with Vidyapatnagar P.S. Case No. 186 of 2020 registered for

offence punishable under section 392 of the Indian Penal Code.

As per allegation, the informant, Rovon Choudhary

was going to Sonapur after loading Potatoes on his Pick-up van

bearing Registration no. BR-09-GA-5456. When he reached



near Mushari, three miscreants on a motor cycle over took the vehicle and stopped it. They pointed out pistol at the temporal region of the driver and took away the Pick-up van after dropping down the informant and driver from that vehicle.

The informant identified two miscreants as Pintu Thakur and Chandan Thakur.

At the very outset, the learned APP has submitted that during the course of investigation, the process under section 82 of the Code of Criminal Procedure, 1973 (herein after referred to as 'the Code') has been issued and served by affixing the promulgation on the house of the petitioner. He has submitted further that as the process under section 82 of the Code has been served, the present anticipatory bail petition is not maintainable in the light of a recent decision of the Hon'ble Supreme Court in *Prem Shankar Prasad Vs. State of Bihar and another in Criminal Appeal No.1209 of 2021*, the judgment dated 21.10.2021 and the present anticipatory bail petition is liable to be dismissed on the point of maintainability.

The learned counsel for the petitioner, by referring a decision of *Punjab and Haryana High Court, Subhash Vs. State of Punjab*, dated 31.07.2020, has submitted that the anticipatory bail petition cannot be dismissed on its threshold merely



because the process under section 82 of the Code has been issued or served.

In *Prem Shankar Prasad's* case, the Hon'ble Supreme Court has been pleased to hold that when the process under section 82 of the Code is issued, the petitioners are not entitled for anticipatory bail. Paragraph 20 of the aforesaid decision is quoted herein below:-

“20 ...Recently, in [Lavesh vs. 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.”

From perusal of the decision in *Prem Shankar Prasad's* case (supra) it is clear that when the process under section 82 of the Code is issued, the present petitioner is not entitled to relief of anticipatory bail. The decision, cited by the learned counsel for the petitioner, makes it clear that the anticipatory bail petition cannot be thrown at its threshold on the ground of maintainability, merely because the process under section 82 of the Code has been issued, but this issue was clarified in *Prem Shankar Prasad's* case (supra), in which, it has been held by the Hon'ble Supreme Court that the entitlement of the anticipatory bail ceases itself, in case the process under section 82 of the Code is issued.

Further submission of the learned counsel for the petitioner is that the process under section 82 of the Code was



issued after filing of this anticipatory bail petition.

The above mentioned decision does not distinguish the situation where the process under section 82 of the Code is issued prior to filing of the anticipatory bail petition or subsequent to the filing of the anticipatory bail petition. The above mentioned decision says that when process is issued, the petitioner is not entitled for the anticipatory bail.

In my view, in any of the circumstances, the petitioner is not entitled for the privileges of anticipatory bail.

With these observations, the prayer for anticipatory bail of the petitioner is rejected.

Office shall ensure that all defects are removed by the petitioner 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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