

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10355 of 2021**

Arising Out of PS. Case No.-72 Year-2020 Thana- SANGRAMPUR District- East
Champaran

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Mehilal Sahani @ Mehilal Sahni Son Of Shivdayal Sahani Village- Jalaha
Pokhara, P.S. Sangrampur, District- East Champran.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner : Mr. Dhannjay Kumar No. 2

For the Opposite Party : Mr.A.G.

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

5 01-12-2022

In this case, the petitioner is seeking anticipatory
bail in connection with Sangrampur P.S. Case No.72 of 2020
registered for the offence punishable under Sections 302 and
201/34 of the Indian Penal Code.

As per the F.I.R. six persons including this
petitioner called the son of the informant from the house and
took him along with them and on the next day his dead body
was found hanging on a tree.

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.



Considering the fact that there is no evidence against the petitioner to connect him with the crime and in the case diary it has come that the deceased was of bad character, this anticipatory bail application is allowed. Let the above-named petitioner, be released on anticipatory bail in the event of his arrest or surrender before the learned Court below within a period of six weeks from today, on furnishing bail bonds of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, East Champaran at Motihari, in connection with Sangrampur P.S. Case no.72 of 2020, subject to the condition as laid down under Section 438(2) of the Code of Criminal Procedure.

(Sandeep Kumar, J)

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