

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1374 of 2019

Arising Out of PS. Case No.-61 Year-2008 Thana- GOPALGANJ COMPLAINT CASE
District- Gopalganj

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ANIL SINGH @ ANIL KUMAR SINGH,, S/O Sri Devendra Singh, R/o
Village+ P.O. + P.S.- Ekma, District- Saran (Chapra).

... .. Petitioner

Versus

1. The State of Bihar Through The Director General of Police, Bihar
2. The Superintendent of Police, Saran, Chapra.
3. The Officer-in-charge P.S. Ekma, District- Saran (Chapra).
4. Shri Narayan Shahi, Son of Late Chandrika Prasad Shahi, R/O Village -
Salempur Gadh, P.S.- Sidhhwalia, District -Gopalganj

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Awadhesh Kumar, Advocate
For the Respondent/s	:	Mr.Iqbal Asif Niyazi, A.C. to G.P.-5
For the Res. No. 4	:	Mr. Bijay Prakash Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 26-07-2022 Heard Mr. Awadhesh Kumar, learned counsel for the

petitioner, Mr. Iqbal Asif Niyazi, learned A.C. to G.P.-5 and Mr.

Bijay Prakash Singh, learned counsel for the complainant-

respondent no. 4.

Petitioner in the present case is seeking the following
reliefs:-

“i) The order dated
04.12.2018 passed by the Additional
Chief Judicial Magistrate-XI, Gopalganj
in connection with Complaint Case No.
61/2018 (Trial No. 546/2019), whereby
direction has been issued for issuance of



order of proclamation under Section 82 of the Criminal Procedure Code, without there being any execution report subsequent to the issuance of non-bailable warrant of arrest to the effect that the petitioner is evading arrest, hence, he could not be arrested. The Petitioner seeks to challenge the order dated 4.12.2018, on the other ground that the order issuing summons has till date, admittedly, not been served upon the petitioner, since the order of summons was served on a vague address at Gopalganj and the same had returned back un-served with a noting that the petitioner was not found in Gopalganj, whereas admittedly the petitioner is a resident of Ekma P.S. District-Saran;

ii) For setting aside the issuance of bailable warrant of arrest issued vide order dated 27.05.2010 and the order dated 22.12.2010, whereby the non-bailable warrant of arrest was issued. The petitioner seeks the quashing of the said two orders on the ground that the bailable warrant of arrest was issued without service of summon issuing order dated 7.07.2009 and the non-bailable warrant of arrest



was issued without awaiting the service report of bailable warrant of arrest;

iii) For stay of order dated 04.12.2018 whereby the proclamation order under Section 82 of the Cr.P.C., has been directed to be issued against the petitioner and for stay of the proceeding during the pendency of this writ application and

iv) For issuance of any other order/orders, as may deem fit and proper, in the facts and circumstances of the case.”

Learned counsel for the petitioner submits that right from the beginning the learned court below proceeded to issue bailable warrant, non-bailable warrant and the processes under Section 82 Cr.P.C. without following the mandatory requirements as envisaged under Section 87 Cr.P.C. in the matter of issuance of warrants in addition to summons.

Learned counsel submits that no reason has been recorded by the learned court below as to why a warrant of arrest be issued in addition to summon particularly when there was no service report of summon.

It is further submitted that the order under Section 82 Cr.P.C. has also been passed in a routine and mechanical



manner.

Reliance in this regard has been placed on the judgment of this Court in the case of **Anil Kumar @ Anil Paswan versus State of Bihar and others** reported in **2020 (2) BLJ 507**.

Attention of this Court has been drawn towards the order dated 13.09.2017 passed by learned court below.

On the other hand, learned counsel for the State as well as opposite party no. 2 submits that the process under Section 82 Cr.P.C. was issued only after obtaining the service report of the non-bailable warrant as it appears from the endorsement made in the margin portion of the order dated 19.12.2016. Learned counsel, however, admits that so far as the order dated 13.09.2017 is concerned, the same does not contain any reason.

Having regard to the submissions noted hereinabove and the materials available on the record, this Court is of the considered opinion that the endorsement made in the margin portion of the order dated 19.12.2016 is completely vague and carries no meaning. The ordersheet would show that the learned court below has issued the warrants bailable as well as non-bailable and further passed order under Section 82 Cr.P.C. in a



routine and mechanical manner. There is neither compliance of Section 87 Cr.P.C. nor of Section 82 Cr.P.C. for passing such order.

As a result, this Court sets aside the orders issuing non-bailable warrants and the process under Section 82 Cr.P.C. against the petitioner.

Learned counsel for the petitioner submits that the petitioner would surrender in the learned court below within a period of 30 days from today.

This writ application is, thus, disposed of with an observation that the petitioner must surrender in the learned court below within the aforesaid period of 30 days whereafter the court shall proceed to pass an appropriate order in accordance with law.

This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

