

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CRIMINAL MISCELLANEOUS No.13867 of 2023**

Arising Out of PS. Case No.-61 Year-2022 Thana- SHASTRINAGAR District- Patna

Danish @ Danish Alam Khan S/O Mohammad Azhar Imam @ Sona Khan  
R/o- Opposite Purani Msjid, Samanpura, Raja Bazar, B.V. College,P.S.-  
Shastri Nagar, District- Patna

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr.Anuj Kumar, Advocate

For the Opposite Party/s : Mr.Ram Naresh Ray, APP

**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**

**ORAL ORDER**

2      15-03-2023                      Heard learned counsel for the petitioner and learned  
APP for the State.

This application has been filed for quashing of order dated 21.11.2022 and 07.12.2022 passed by learned A.C.J.M-IX, Patna in connection with Shastrinagar P.S. Case No. 61 of 2022, by which the learned Magistrate has issued non-bailable warrant and press under Section 82 of Cr.P.C respectively.

As per the prosecution case, the petitioner established physical relation with the informant on the pretext of marriage. Further, on asking about the solemnization of marriage, the petitioner blocked the number of the informant and told her to continue the physical relationship with him. On 03.02.2022, when the informant was returning from Samanpura, the



petitioner along with three friends kidnapped the informant with an intention to kill her.

Learned counsel for the petitioner has submitted that impugned order is bad in law, in view of the facts that the process under Section 82 has been issued in teeth of the law laid down by the Supreme Court in case of ***State through CBI Vs Dawood Ibrahim Kaskar & Others*** reported in ***(2000)10 SCC 438*** and the law laid down by this Court in case of ***Krishna Murari Yadav Vs The State of Bihar*** reported in ***2005(3) PLJR 746***. He further submits that the learned Magistrate cannot issue non-bailable warrant and process under Section 82 of the Cr.P.C in aid of the investigation in a mechanical manner.

Learned counsel for the opposite party no. 2 and the learned APP for the State on the legal position have no quarreled but learned counsel for the opposite party no. 2 has submitted that impugned order is justified though it is a cryptic order.

I have considered the submissions of the parties and also gone the records of the case, the impugned order dated 21.11.2022 and 07.12.2022 reads as follows:-

*“(I) I.O. of this case filed a petition praying there in that to issue non-bailable warrant against Danish Khan @ Danish Son of Md. Ashor Imam @ Sana Khan, R/o- Samanpura Raja Bazar near Masjid P.S. Shastri Nagar, Dist- Patna.*



*Heard the submission of I.O. and perused the record and case diary. From perusal it transpired that the case is registered U/s 341, 342, 323, 354, 354(A), 504, 506 and 34 of I.P.C. and the said accused is wanted in this case. Hence the prayer of I.O. is permitted. O/C is directed to issue non-bailable against about named accused.*

*(ii) The investigating officer and Id. SDPO passed the petitioner dated 10.06.2022 praying there in that to add section 493 and 376 of the I.P.C. in the formal F.I.R. as the informant stated in her further written statement about rape and I.O. of this case and perusal the record. Hence this petition in permitted I.O. is directed to add the said sections in the formal F.I.R. and put her sign.”*

From the bare reading of the aforesaid orders, it appears that the orders are in teeth of law laid down by the Supreme Court in the Case of ***State through CBI Vs Dawood Ibrahim Kaskar & Others (supra)*** and law laid down by this Court in the case of ***Krishna Murari Yadav Vs The State of Bihar (supra)***. Further, in the present case, the learned Magistrate has acted mechanically on an application filed by the police. He has mechanically issued non-bailable warrant and the process under 82 of the Cr.P.C when the petitioner was perusing his anticipatory bail in the Court of District Judge, Patna.

In view of the aforesaid facts, this application is allowed and the impugned order dated 21.11.2022 and 07.12.2022 passed by learned A.C.J.M-IX, Patna in connection



with Shastrinagar P.S. Case No. 61 of 2022 are hereby quashed.

**(Sandeep Kumar, J)**

Harsh/

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