

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58410 of 2023

Arising Out of PS. Case No.-363 Year-2022 Thana- CHAKIA District- East Champaran

Vishnu Kumar S/O Late Chandrika Prasad R/O Village- Chakia, Sahebganj Road, Ward No. 16, P.S.- Chakia, Distt.- East Champaran At Motihari, Bihar- 845412.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Kumar Kaushik, Advocate
For the Opposite Party/s	:	Mr. Bhanu Pratap Singh, APP
For the Informant	:	Mr. Karandeep Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

3 13-12-2023 Heard Mr. Kumar Kaushik, learned counsel appearing on behalf of the petitioner and the learned Additional Public Prosecutor for the State. The informant is represented by Mr. Karandeep Kumar, learned counsel.

2. The petitioner apprehends his arrest in connection with FIR No. 512800320363 registered at Chakia Police Station on 21.08.2022, registered for the offences punishable under Sections 302, 307, 326, 447, 109, 504 and 506/34 of the Indian Penal Code.

3. Allegedly, while the informant was doing his agriculture work at his field, in the meantime, all the FIR named accused persons, including the petitioner and other 8-10 unknown persons, variously armed with sharp objects, sword and iron rod came there and started abusing. It is further alleged



that co-accused Manish Kumar caught hold the brother of the informant Shambhu Chaudhur (deceased) and co-accused Prabhat Kumar assaulted on his head by a sword due to which he fell down. Further co-accused Ram Ayodhya Paswan attacked his nephew Vinay Kumar with a sword due to which his nephew sustained a cut injury in his hand. It is further alleged that, in the meanwhile, co-accused Pramod Kumar directed for catching hold of informant and for killing him, however, he succeeded in fleeing away.

4. Learned counsel appearing on behalf of the petitioner submits that from the narratives made in the FIR, admittedly there is no allegation attributed against the petitioner, save and except, he was also member of the unlawful assembly. He further submits that the genesis of the occurrence lies in a land dispute between co-accused Ram Ayodhya Paswan and the informant's family and earlier there was a litigation between the parties. He next submitted that the post-mortem report also does not corroborate the allegation, inasmuch as, it suggest that the deceased Shambhu Chaudhur died on account of assault due to head injury caused by hard and blunt substance, whereas it is alleged in the FIR that co-accused Prabhat Kumar had assaulted him on his head by a sharp cutting sword. He further submits



that taking note of the aforesaid facts, co-accused Manish Kumar @ Manish Kumar Gupta, against whom there is allegation that he caught hold the brother of the informant, has been allowed the privilege of learned co-ordinate Bench of this Court in Cr. Misc. No. 47562 of 2023, the copy of which has been place before this Court.

5. While summing up the submission, Mr. Kumar Kaushik, learned counsel for the petitioner further drawn the attention of this Court to the averments made in the supplementary affidavit and further submitted that though in the present case, the process under Sections 82 and 83 have been issued but, from the record it appears that vide order dated 08.09.2023, the learned Judicial Magistrate 1st Class directed for issuance of proclamation and the same was published on the wall of the house of the petitioner in which the petitioner was directed to appear by/before 06.10.2023 before the learned trial Court, however, despite the date given as 06.10.2023, the prosecution pressed for order under Section 83 of the Cr.P.C., which was erroneously passed by the Learned Judicial Magistrate on 14.09.2023, just 6 days after the order was passed under Section 82 of the Cr.P.C. and thus, in complete defiance of all the provisions of 82(4) of the Cr.P.C.



6. Mr. Kaushik, learned counsel for the petitioner further relied upon a decision of learned co-ordinate Bench of this Court in the case of ***Santosh Yadav @ Santosh Kumar Yadav Vs. State of Bihar*** reported in ***2022 (5) BLJ 29***, wherein the learned co-ordinate Bench has held that anticipatory bail application is maintainable even after issuance of process under Section 82 of the Cr.P.C. and, moreover, 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.

7. On the other hand, learned counsel for the State as well as informant opposed the pre-arrest bail application and submits that once the process under Sections 82 and 83 has been issued against the petitioner, the present anticipatory bail is not maintainable in view of the judgment of the Hon'ble Apex Court in the case of ***Lavesh Vs. State (NCT of Delhi)*** reported in ***(2012) 8 SCC 730***.

8. Before parting with the final outcome, it would be apposite to quote paragraph no. 13 of the judgment rendered in the case of ***Santosh Yadav (supra)***, only with a view to answer the issue of maintainability.



*13. 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.

9. Regard being had to the submissions made on behalf of the parties and considering the infirmities in issuing the process under Section 83 of the Cr.P.C, as also the judgment passed by learned co-ordinate Bench of this Court based upon



the various judgments of the Hon'ble Apex Court holding that the right of an accused, as provided under Article 21 of the Constitution of India, cannot be taken away in such a manner contrary to the settled provisions of law. Furthermore, this Court also finds that there is no specific accusation against the petitioner, coupled with the fact that co-accused person having allegation of catching hold the (deceased) brother of the informant, has been allowed the privilege of anticipatory bail, the petitioner having fair antecedent, let the petitioner above named be released on bail, in the event of his arrest or surrender before the court below within a period of four weeks from the date of receipt/production of a copy of this order, upon furnishing bail bonds of Rs.20,000/- (twenty thousand) with two sureties of the like amount each to the satisfaction of the learned Judicial Magistrate, 1st Class, Sadar, Motihari in connection with FIR No. 512800320363 registered at Chakia Police Station on 21.08.2022, subject to the conditions laid down in Section 438(2) Cr.P.C. with the further condition that one of the bailors shall be the own/close family members of the petitioner.

(Harish Kumar, J)

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