

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4018 of 2022**

Arising Out of PS. Case No.-226 Year-2022 Thana- BISFI District- Madhubani

MD. AARIF S/o Md. Akeel R/v- Blant, P.S.- Rahika, District- Madhubani

... .. Appellant/s

Versus

1. The State of Bihar
2. TAUHIR AHMAD S/o Shamim Shmad R/v- Basauli Blant, P.S.- Rahika, District- Madhubani

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 4071 of 2022

Arising Out of PS. Case No.-226 Year-2022 Thana- BISFI District- Madhubani

MD AAKIF @ GOLDI @ MD AAKUF @ MD. ASIF S/O Md. Akeel R/O
Village- Blant, P.S- Rahika, District- Madhubani

... .. Appellant/s

Versus

1. The State of Bihar Bihar
2. Taukir Ahmad S/O Shamim Ahmad R/O Village- Basauli Blant, P.S- Rahika, District- Madhubani

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 4240 of 2022

Arising Out of PS. Case No.-226 Year-2022 Thana- BISFI District- Madhubani

1. MD AKEEL @ AKEEL AHMAD S/O Late Atauar Rahman R/O Village- Blant, P.S- Rahika, District- Madhubani
2. Ahmad Kamali S/O Mehendi Hasan R/O Village- Blant, P.S- Rahika, District- Madhubani
3. Kafil Ahmad S/O Late Atauar Rahman R/O Village- Blant, P.S- Rahika, District- Madhubani



... .. Appellant/s

Versus

1. The State of Bihar Bihar
2. Taukir Ahmad S/O Shamim Ahmad R/O Village- Basauli Blant, P.S- Rahika, District- Madhubani

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 4018 of 2022)

For the Appellant/s	:	Mr. Virendra Kumar, Adv.
For the State	:	Ms. Usha Kumari 1, APP
For the Informant	:	Mr. N.K. Agrawal, Sr. Adv.
		Mr. Amit Narayan, Adv.
		Mr. Sanjay Ghoserw, Adv.
		Mr. Kumar Rajdeep, Adv.
		Mr. Ashish Kumar, Adv.
		Mr. Abhigyan Kumar, Adv.
		Mr. Brajesh Sehay, Adv.

(In CRIMINAL APPEAL (SJ) No. 4071 of 2022)

For the Appellant/s	:	Mr. Virendra Kumar, Adv.
For the State	:	Mr. Binay Krishna, APP

(In CRIMINAL APPEAL (SJ) No. 4240 of 2022)

For the Appellant/s	:	Mr. Virendra Kumar, Adv.
For the State	:	Mr. Sadanand Paswan, APP

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV ORDER

8 09-08-2023 As all these bail appeals have cropped up from the same police station case number, hence, with consent of parties, they are being heard together and disposed of by this common order.

2. Heard learned counsel for the appellants, learned Special Public Prosecutor for the State and learned Senior Counsel for respondent no. 2.

3. This is an appeal under Section 14 A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter in short referred to as the



SC/ST Act), against the refusal of prayer of anticipatory bail vide order dated 03.11.2022 passed by learned Additional Sessions Judge, 1st-cum-Special Judge SC/ST (POA) Act, Madhubani, in connection with Bisfi (Aunsi O.P.) P.S. Case No. 226 of 2022 registered under Sections 341, 323, 326, 307, 379, 504, 506/34 of the Indian Penal Code and Section 3(i)(r)(2)(v) (a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

4. As per the prosecution case, the appellants along with other accused persons are said to have assaulted the informant upon his head by means of rod. It is also alleged that they have assaulted and abused one Ram Sharan Paswan by taking his caste name.

5. Learned counsel for the appellants submits that the appellants are innocent and have falsely been implicated in this case. The allegation against the appellants is out and out false, concocted and fabricated, there is no iota of truth at all in the facts and circumstances of the case. The appellant in Cr. Appeal No. 4018 of 2022 have no criminal antecedent, appellants in Cr. Appeal No. 4240 of 2022 i.e. appellants no. 1 and 2 have two criminal antecedents and appellant no. 3 has no criminal antecedent and appellant in Cr. Appeal No. 4071 of 2022 have



two criminal antecedents. He further submits that informant alleged in his *fardbyan* that on order of Akeel Ahmad, co-accused Md. Aakif inflicted sword blow on the head of informant on account of which informant received cut injury on his head and he fell down on the ground with blood of pool, thereafter co-accused Md. Aarif given a rod blow which hit on the forehead of informant in the meantime co-accused Shaukin also given a rod blow which hit near the nose of informant and blood oozing out from his nose, thereafter Ahmad Kamali assaulted indiscriminately by means of lathi and Akeel Ahmad ride on the chest of informant and started jumping, thereafter all the accused persons assaulted to informant by means of lathi-danda and caused the informant badly injured, and when Shakil Ahmad cousin of informant came to rescue then aforesaid persons also assaulted him and caused him badly injured. The informant was examined by the Doctor and the injury was found simple in nature but may be dangerous to life. The Doctor has also examined Sakil Ahmad, cousin of the informant, and the injury was found simple in nature. One local person named Ram Sharan Paswan, who belongs to the SC/ST caste came to save informant's side then he was assaulted by all the accused persons and the doctor has examined his injury and found



grievous in nature. The present FIR was not lodged by the said Ram Sharan Paswan but by the informant who does not belongs to SC/ST caste.

6. He submits that the date of occurrence is 08.08.2022, the anticipatory bail is filed by the appellants in the Court below on 23.08.2022 and the said anticipatory bail application was dismissed by Court below on 03.11.2022. Thereafter, the appellants preferred an appeal in the High Court on 16.11.2022/ 22.11.2022/ 22.11.2022 respectively. The actual date of on-line filing would be few days prior to the generation of the Token Number. The date of issuance of non-bailable warrant under Section 73 of Cr.P.C. is 04.10.2022. The date of issuance of process under Section 82 of Cr.P.C. is 09.11.2022, within six days after rejected of the anticipatory bail by the Court below. The date of issuance of process under Section 83 of Cr.P.C. is 19.12.2022.

7. He further submits that anticipatory bail was preferred in the Court below even before issuance of non-bailable warrant. Process under Section 82 of Cr.P.C. was issued six day after rejection of anticipatory bail in the Court below, when the appellants had already moved before High Court without loss of time assailing the order of rejection of



anticipatory bail. Process under Section 83 Cr.P.C. was issued much later on 19.12.2022. Thus, it is apparent that the appellants never absconded. They rather submitted to the jurisdiction of the Court for grant of anticipatory bail and process under Sections 73, 82 and 83 of Cr.P.C. were issued pending consideration of the prayer of the appellants for grant of anticipatory bail.

8. Learned Spl. PP for the State as well as learned Senior Counsel for the Respondent party no. 2 submitted that the process of Section 82 and 83 of Cr.P.C. has been issued, therefore, anticipatory bail is not maintainable. Learned Senior Counsel relies upon the judgment of ***Prem Shankar Prasad Versus The State of Bihar & Others (Cr. Appeal No. 1209 of 2021)***, it was decided by the Hon'ble Apex Court that it is clear that the issue, inter alia, was that whether an application for anticipatory bail is maintainable, when the accused as provided under section 82 of the Cr.P.C. has been declared absconder/proclaimed offender. Reference may be made to Para-12 of the judgment reported in ***Lavesh Kumar vs. State (NCT of Delhi) 2012 (8) SCC 370*** which reads as under:-

"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 proclaimed offender in terms of section 82 of the Code he is not entitled to the relief on anticipatory bail".

9. He fairly submits that under Section 438 Cr.P.C. there is no such bar put by the Legislature with regard to the maintainability of anticipatory bail but by virtue of the judgment of the Hon'ble Supreme Court of India, the said bar has been put forth by the Hon'ble Supreme Court. He further submits that the latest judgment of the Hon'ble Supreme Court has further put a restriction and that is to say, prior to section 82 (4) Cr.P.C. also in a case, proclamation is issued under section 82 Cr.P.C. has been issued, in that case anticipatory bail shall not be maintainable. He further relies upon the judgment of Hon'ble Supreme Court of India in case of ***Sanatan Pandey vs. State of UP reported in SLP (Criminal) No. 7358 of 2021***, has also put a wider restriction immediately after 82 Cr.P.C. proceeding has been initiated, anticipatory bail is not maintainable and by no imagination the said judgment is contrary to law or the Act.

10. Learned counsel for the appellants refutes the submission of the learned Senior Counsel for the informant and



submits that the judgments on which reliance has been placed by the learned Senior Counsel were rendered in a completely different sets of facts and circumstances. He next submits that mere abscondence is not the sole criteria to deny the valuable rights of personal freedom of an individual more so when the provisions of Sections 82 and 83 of Cr.P.C., are provisional in nature. He further submits that Right to Life and Personal Liberty is a sacrosanct Fundamental Right as envisaged in Article 21 of the Constitution of India and liberty of a person cannot be curtailed except in accordance with the procedure established by law and definitely not by giving restrictive interpretation of a statute.

11. Learned counsel for the appellants submits that the ratio laid down in the case of *Lavesh Kumar* (supra) is concerned, it is clear from para. 12 of the judgment that the Court has held that normally, when the accused in absconding and declared as a proclaimed offender there is no question of grant of anticipatory bail. This simply means that an accused would not be entitled to be granted anticipatory bail on merit only when he has already been declared a proclaimed offender. No doubt, the appellants herein have not been declared proclaimed offender in the present case, as yet under Section



82(4) of Cr.P.C. He further relies upon the judgment of State of MP vs. *Pradeep sharma reported in 2014 (2) SCC 171* or *Prem Shankar Prasad* (supra) is concerned, they have simply relied on the law laid down particularly in para 12 of the judgment delivered in *Lavesh Kumar* (supra).

12. Learned counsel for the appellants further submits that in the case of *Prem Shankar Prasad* (supra) or *Sanatan Pandey* (supra), the prayer was refused on merit and not on the ground of maintainability. In the case of *Prem Shankar Prasad* (supra), the Supreme Court indeed considered the factum of issuance of process under section 82 and 83 Cr.P.C. even before approaching High Court, the order of grant of prayer for Anticipatory Bail by the High Court was interfered since the High Court had not properly considered the nature of the accusations levelled against the accused. The Hon'ble Court, thus, reiterated the ratio of *Lavesh* (supra) and set aside the order of High Court on merit and not on the ground of maintainability.

13. Learned Counsel for appellants further submits that besides, proclamation u/s 82 Cr.P.C. attains finality only after accused is declared proclaimed offender u/s 82(4) of the Cr.P.C., in this case no order was passed under Section 82(4) of



Cr.P.C. He further submits that the law laid down in **Lavesh Kumar** (supra) and **Pradeep Sharma** (supra) vis-à-vis maintainability of anticipatory bail application was also considered and clarified by the High Court of Himachal Pradesh and Madhya Pradesh in **Mahendra Kumar v. State of Himachal Pradesh**, Cr. MP (M) No. 1682/2020 dated 26.10.2020 and **Balveer Singh Bundela v. State of M.P.**, ILR (2020) MP 1216 dated 12.05.2020 respectively. Para 24, 26, 28 and 29 of **Balveer Singh Bundela** (supra) and para 11 of **Mahendra Kumar** (supra) amply clarifies that issuance of process under section 82 has no bearing on the maintainability of an anticipatory bail application of an accused. Law laid down in **Lavesh** (supra) is merely manifestation of the condition indicated under section 438 (iii) of Cr.P.C, which mandates that while granting bail to an accused on merit, the Court should also take note of the possibility of the accused fleeing from justice.

14. Learned Counsel for appellants further relied upon judgment of Supreme Court in **Guru Baksh Singh Sibbia v. State of Punjab**, AIR 1980 SC 1632 and have reiterated that an Anticipatory Bail application of an accused is maintainable until he is arrested. The principal is reiterated by another constitutional bench judgment delivered in **Sushila Agrawal**



and Ors. NCT of Delhi, 2020 (5) SCC 1. He further submits that the Hon'ble Patna High Court, vide order dated 07.02.2018 passed by Hon'ble Mr. Justice Mohit Shah in *Shiv Shankar Prasad Sinha v. State of Bihar* bearing Cr. Misc. No. 62208 of 2017, has also clarified at page 4 after examining the judgment of *Lavesh* (supra) and *Pradeep Sharma* (supra) that only in cases where the accused is declared a proclaimed offender in terms of section 82 Cr.P.C. that he may not be entitled to grant of anticipatory bail. Since in this case, the appellants was not declared proclaimed offender, the privilege of anticipatory bail was duly extended to him.

15. Learned Counsel for appellants further relied upon the judgment of this Court in *Krishna Mohan Lal & Anr. vs. State of Bihar*, passed in Cr. Misc. No. 1118 of 2021 delivered by Hon'ble Mr. Justice Rajeev Ranjan Prasad, held that issuance of process u/s 82 of 83 of Cr.P.C. has no bearing on the maintainability of petition u/s 438 of Cr.P.C. especially when the same was issued during pendency of bail application that too during pandemic. It is admitted that the anticipatory bail application of the appellants was already pending in the Hon'ble Court.

16. Learned Counsel for appellants further submits



that in the routine and casual manner the Investigating Officer requested the learned court below to declare these appellants absconder. The learned court below was not informed of the fact that the appellants are before the Hon'ble High Court in anticipatory bail application, therefore, the order declaring the appellants absconder would not take away the statutory remedy available to the appellants in this case. He further submits that in the provisions under Section 82 and 83 of Cr.P.C., the very opening word of Section 82 Cr.P.C. speaks that "if any court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation." He further submits that if the Court deems just and proper that such proclamation be published in the daily newspaper but in this case no such proclamation has been published. He further submits that the I.O. does not satisfy the requirement of Section 82 Cr.P.C. In this case the I.O. had never issued any notice to the accused to appear and no such material was brought to the notice of the learned court below, the court



was informed that the appellants are before this Hon'ble Court, therefore, on a mere bald statement of the I.O., the court cannot form a belief.

17. Learned Counsel for appellants lastly submits that the order sheet of the Court below has been brought on record by the informant through affidavit, which only indicates that the order of issuance of non bailable warrant and process under Section 82 of Cr.P.C. dated 14.10.2022 and 09.11.2022 respectively have been mechanically passed in a routine manner without assigning any reason. These orders are, thus, not tenable being in teeth of the law laid down by the Hon'ble Apex Court in ***RD Bhasin v. State of Maharastra and Anr., 2012 (9) SCC 791***. It is held in para-10 of the judgment that 'it needs little emphasis that since the execution of NBW involved curtailment of liberty of a person, warrant of arrest cannot be mechanically issued but only after recording satisfaction that in the facts and circumstances of the case it is warranted. The Courts have to be extra cautious and careful while directing issue of NBW else a wrongful detention would amount to denial of constitutional mandate envisaged in article 21 of the Constitution of India'. It is apparent that in the present case, no reason or satisfaction is recorded in the order of issuance of



NBW as also in the order of issuance of process under Section 82, Cr.P.C. Thus, they are otherwise also bad in the present circumstances.

18. From perusal of record, it appears that a counter affidavit is also filed on behalf of the respondent no. 2, in which the order sheet of the Court Below is enclosed, by which the date of issuance of the process u/s 82 of Cr.P.C., is 09.11.2022 but the appellants has not been declared offender by the Court below, which is clear from the order sheet of the Court below and Section 83 of the Cr.P.C. has been issued by the Court below on 19.12.2022, when the anticipatory bail application of the appellants is pending in this Court, considering this fact an order of proclamation under Section 82 of the Cr.P.C. would not ipso facto render an anticipatory bail application non-maintainable, if the said proclamation have been issued with a complete non-application of mind and on the mere asking of the investigating agency. The recording of the satisfaction before issuance of the order of proclamation is the requirement of statute and has to be scrupulously followed. Any deviation would render the order of proclamation a nullity in the eyes of law and would be rendered unenforceable.

19. In view of the aforesaid angle and the statutory



requirement of recording the satisfaction, it can be safely concluded that the learned Court below has issued warrant and also an order of proclamation under Section 82 of the Cr.P.C. merely on the asking of the investigation agency without recording even a prima facie satisfaction of the existence of the statutory sine qua non. In this case the provisions of Section 82(4) of Cr.P.C. has been not completed by the investigating agency and when process u/s 83 of Cr.P.C. issued, it is admitted fact that anticipatory bail applications of appellants are pending before this Court

20. Examined thus, the objection with regard to maintainability of the instant anticipatory bail appeals are fit to be dispelled and rejected.

21. Now coming to the merits of the case, considering the fact that the injury was found simple in nature and also appellants are not specifically alleged to be the author of grievous injury sustained by one of the victims, let the above named appellants, in the event of their arrest or surrender before the learned Court below within a period of six weeks from today, be enlarged on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) each with two sureties of the like amount each to the satisfaction of learned Additional



Sessions Judge, 1st-cum-Special Judge SC/ST (POA) Act, Madhubani, in connection with Bisfi (Aunsi O.P.) P.S. Case No. 226 of 2022, subject to the condition as laid down under Section 438 (2) of the Cr.P.C.

22. Accordingly, the impugned order is set aside and this appeal is allowed.

(Anjani Kumar Sharan, J)

anand/-

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