

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4629 of 2023

Arising Out of PS. Case No.-25 Year-2010 Thana- PARAIYA District- Gaya

=====

Ram Prasad Yadav @ Ram Kumar Yadav Son Of Late Kameshwar @
Kameshwar Yadav R/O Village- Bhairapur, P.S.- Paraiya, District- Gaya

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Manish Kumar No. 2, Advocate

For the Opposite Party/s : Mr. Umesh Lal Verma, APP

=====

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

3 24-05-2023 Heard learned counsel appearing on behalf of the

petitioner and learned Additional Public Prosecutor appearing

on behalf of the State.

Let the defect(s), as pointed out by the office, if any,

be removed within a period of four weeks from today.

The accused/petitioner is named in the F.I.R. and

apprehending his arrest in connection with Paraiya P.S. Case

No. 25 of 2010 registered for the offences punishable under

Sections 341, 448, 323, 354, 379 and 504 of the Indian Penal

Code.

The allegation against petitioner is to made an attempt

for commit rape upon informant and also to taken away her

golden chain, during occurrence.

It is submitted by learned counsel appearing on behalf



of the petitioner that after investigation, police submitted charge sheet under Section 504 of IPC, where without any cogent materials, learned Jurisdictional Magistrate had taken cognizance under Sections 354, 457 and 504 of the Indian Penal Code. It is also submitted that the occurrence is arises out of drainage issues. It is fairly submitted that process under Section 82 of the Criminal Procedure Code has already issued against this petitioner but despite of that in view of ratio as laid down by Hon'ble Supreme Court in the case of ***Gurbaksh Singh Sibbia Vs. The State of Punjab***, reported in ***AIR 1980 SC 1632***, which has been further affirmed in matter of ***Sushila Aggarwal and others Vs. State (NCT of Delhi) and another*** reported in ***(2020) 5 SCC 1***, anticipatory bail petition is maintainable. It is further submitted that even from the scheme of Cr.P.C. it *prima facie* appears that Section 82 of the Criminal Procedure Code is only for the purpose to secure the presence of accused before the Court. It is also pointed out that Section 83 of the Criminal Procedure Code, is an additional provision having some more strict provision to secure the presence of accused before Court as same dealing with attachment of property. It is also submitted that the scheme of Section 438 of the Cr.P.C. nowhere bars anticipatory bail application on the ground of issuance of



process under Section 82 of the Cr.P.C. and as such, the present prayer of anticipatory bail is maintainable even after issuance of the process under Section 82 of the Cr.P.C. against the petitioner because the right survives till arrest.

Learned APP, while opposing the prayer of bail submitted that process under Section 82 of the Cr.P.C. has already issued against this petitioner and since 2010, the petitioner is evading his appearance before the Court of law being absconder.

Considering the aforesaid facts and circumstances, this Court is *prima facie*, convincing with the argument of learned counsel appearing on behalf of petitioner that the prayer of anticipatory bail application of petitioner survives even after issuance of process under Section 82 of Cr.P.C., In view of aforesaid fact, as nature of assault is simple, which arises out of neighbourhood disputes and differences, let above named petitioner, in the event of his arrest or surrender before the court below within a period of four weeks, are directed to be released on bail, furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Judicial Magistrate-1st Class, Gaya/concerned Court, where the case is pending in connection



with Paraiya P.S. Case No. 25 of 2010 subject to the conditions as laid down under Section 438(2) of the Cr.P.C. with further conditions:-

(i) That accused/petitioner shall cooperate in the trial and shall be physically present on each and every date before the Trial Court till conclusion of the trial and exemption from physical appearance be allowed by the Trial Court, only on medical ground of the petitioner, duly supported by the documents.

(ii) That one of the bailors shall be deponent of the present bail petition.”

(Chandra Shekhar Jha, J)

veena/-

U		T	
---	--	---	--

