

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1981 of 2023

Arising Out of PS. Case No.-1867 Year-2021 Thana- SAMASTIPUR COMPLAINT CASE
District- Samastipur

Amrendra Bharti, Son of Arjun Sah, Resident of Village- Bhadas North, P.S.
Khagaria Muffasil District Khagaria

... .. Petitioner

Versus

1. The State of Bihar through Director General of Police, Bihar, Patna
2. The Superintendent of Police, Samastipur
3. The Officer In Charge, Samastipur Town, Police Station at Samastipur
4. Arvind Kumar Pankaj, Son of Late Jageshwar Chaurasia, Resident of Village- West of Girl High School, Kashipur, P.S.- Samastipur Town, District- Samastipur

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Shanti Bhushan Singh, Advocate
For the State	:	Mr. SC-25
For the Resp No. 4	:	Ms. Vaishnavi Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 21-12-2023 Heard learned counsel for the petitioner and learned
counsel for the respondent no. 4 as also the State.

2. The petitioner in the present case is seeking the
following reliefs:-

“(i) For quashing the complaint case no.
1867 of 2021.

(ii) For quashing the order dated 14.3.2022,
order of cognizance passed by the learned
C.J.M. Samastipur in Complaint Case No.
1867 of 2021.

(iii) For quashing the order dated 10.4.23
and 30.5.2023 passed by the C.J.M.
Samastipur in Complaint Case No. 1867 of
2021 in which process of 82 and 83 of
Cr.P.C issued against the petitioner.

(iv) For any other relief/reliefs which is
entitled to the petitioner in accordance with

law.”

3. Learned counsel for the petitioner submits that the complainant Arvind Kumar Pankaj happen to be the Assistant Branch Manager of the Company, namely, Sarvoday Proficient Nidhi Ltd. According to the complainant, this petitioner was one of the Directors on the Board of the said non-banking finance Company. It is alleged that during the period 2016-2019, the Company collected huge amount of Rs.1,72,03,225/- from the customers under the daily and monthly schemes but when the customers started demanding money, the accused persons delayed the payment initially on one ground or another. It is alleged that they conspired to misappropriate the money deposited by the customers and fled away.

4. Learned counsel for the petitioner submits that earlier the complainant had filed a first information report bearing Samastipur Town P.S. Case No. 179 of 2019 in which police had submitted a final form showing the petitioner not sent up for trial but on the basis of a protest petition filed by the informant, the present complaint case has been registered and proceeded against the petitioner. The learned C.J.M., Samastipur has taken cognizance of the offence under Section 420 of the Indian Penal Code and issued summons to eight accused

persons including the petitioner.

5. It is further submitted that despite there being no service report of service of summons, the learned Magistrate issued bailable warrant on 18.08.2022 and thereafter a non-bailable warrant on 21.10.2022. It is further submitted that on 10.04.2023, the learned C.J.M. has issued process under Section 82 Cr.P.C. against the petitioner and on 30.05.2023 the learned court has been pleased to issue process under Section 83 Cr.P.C.

6. In course of hearing, this Court inquired from learned counsel for the petitioner as to why the petitioner is not appearing in the learned court below or he may apply for anticipatory bail.

7. Learned counsel for the petitioner instantly submitted that the petitioner is unable to apply for anticipatory bail because once the processes under Section 82 and Section 83 of Cr.P.C. are exhausted, an anticipatory bail application is not entertained by this Court.

8. The main contention of learned counsel for the petitioner is that because of the perfunctory kind of the order issuing processes under Section 82 and Section 83 of Cr.P.C., the petitioner is unable to seek his remedy of pre-arrest bail.

9. The informant has entered appearance through Ms.

Vaishani Singh, learned counsel. At the outset, learned counsel has produced before this Court a copy of the order dated 07.07.2023 passed in Cr. Misc. No. 27900 of 2023 and submits that the petitioner had earlier applied for anticipatory bail before the learned Sessions Judge and when his prayer for anticipatory bail was rejected, he had come to this Court. This Court considered his prayer for anticipatory bail on its own merit but on finding that the petitioner is admittedly having control over the non-banking finance Company as he was the majority shareholder of the Company and Director of the Board, decided to reject his prayer for anticipatory bail.

10. It is, thus, submitted that a false statement is being made before this Court that because of issuance of processes under Section 82 and Section 83 of Cr.P.C., he is deprived of his remedy to seek pre-arrest bail.

11. Learned counsel submits that the petitioner is well aware of issuance of non-bailable warrant against him and it is evident from the fact that he had applied for pre-arrest bail which has been rejected earlier.

12. The order issuing processes under Section 82 and Section 83 of Cr.P.C. need not be examined in the facts of the present case where on records it is evident that the petitioner

was well aware of the fact that he is being searched by police on the strength of a non-bailable warrant and the petitioner was evading his arrest and at the same time, he is not putting his appearance in the court.

13. Having heard learned counsel for the petitioner and learned counsel for the informant as also the State, this Court is of the considered opinion that the submission of learned counsel for the informant carries much weight and this Court is inclined to accept the same. The petitioner is well aware of the non-bailable warrant against him, he has already exhausted his remedy for pre-arrest bail up to this Court in Cr. Misc. No. 27990 of 2023. His prayer was rejected by this Court as back as on 07.07.2023, still he has not surrendered and prayed for regular bail. It is not his case that he has applied for his remedy for pre-arrest bail before the Hon'ble Apex Court or any application in this regard is pending.

14. In such circumstance, filing of the present application after about five months from the date of rejection of his prayer for anticipatory bail is nothing but only an attempt to avoid his surrender in the learned court below. This is not a bonafide application is also evident from the fact that a false and misleading statement was made in this Court that the present

application has been filed because a prayer for anticipatory bail is not entertained where processes under Section 82 and Section 83 of Cr.P.C. are exhausted. The petitioner has not approached this Court with clean hands.

15. This application is dismissed with a cost of Rs.10,000/- which the petitioner would be liable to deposit with the Patna High Court Legal Services Committee within four weeks from today, failing which it will be realized from him in accordance with law.

(Rajeev Ranjan Prasad, J)

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