

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7725 of 2024

Arising Out of PS. Case No.-168 Year-2018 Thana- NALANDA COMPLAINT CASE
District- Nalanda

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1. Rajesh Singh Son of Uma Shankar Singh Resident of Village/Mohalla-Mohanpur Shivpuri, Town Giridih, Post-Pachama, Police Station - Nagar (Giridih), District - Giridih, Jharkhand.
 2. Sudha Devi Wife of Uma Shankar Singh Resident of Village/Mohalla-Mohanpur Shivpuri, Town Giridih, Post-Pachama, Police Station-Nagar (Giridih), District-Giridih, Jharkhand.
 3. Rinki Devi @ Rinky Singh Wife of Rajesh Singh Resident of Village/Mohalla-Mohanpur Shivpuri, Town Giridih, Post-Pachama, Police Station- Nagar (Giridih), District - Giridih, Jharkhand.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sabita Kumari @ Sabbi Wife of Chandan Kumar, Daughter of Ram Sohaban Singh Resident of Village/Mohalla-Mohanpur Shivpuri, Town Giridih, Post-Pachama, Police Station-Nagar (Giridih), District-Giridih, A/P Village-Daroga Bigha, Post-Tungi, Police Station-Deepnagar, District-Nalanda.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Jai Prakash Singh, Advocate Mr. Anil Kumar Singh, Advocate
For the Opposite Party/s :		Mrs. Asha Kumari, APP
For the O.P. No. 2	:	Mr. Bishwa Bijay Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

3 18-04-2024 Heard learned counsel for the petitioners as well as learned counsel appearing on behalf of the complainant-opposite party no. 2 and learned APP for the State.

2. In the present case, the petitioners are apprehending their arrest in connection with Complaint Case No. 168C of 2018, filed on 19.02.2028 for the offences under Sections 323, 379, 498A/34 of the Indian Penal Code and Sections 3/4 of Dowry Prohibition Act, wherein processes have



been directed to be issued after cognizance being for the offences under Sections 498A/34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act.

3. As per prosecution case, the petitioners, who are in-laws of the complainant, along with other co-accused persons used to torture and treat the complainant with cruelty on account of their demand. The complainant was forced to leave her matrimonial home under these circumstances.

4. Learned counsel for the petitioners submits that the petitioners are brother-in-law (Bhaisur), mother-in-law (Saas) and sister-in-law (Gotni) of the complainant. The allegations are general and omnibus and there is no specific allegation against these petitioners either for demanding dowry or inflicting torture against the complainant and petitioners are having clean antecedent. Learned counsel further submits that from bare perusal of the complaint petition it would appear that the occurrence took place in Giridih and not within the jurisdiction of learned Judicial Magistrate as the complaint petition was filed before learned Chief Judicial Magistrate, Nalanda. Learned counsel further submits that though in rejection order it has come that the process under Sections 82 and 83 of the Code of Criminal Procedure (in short 'Cr.P.C.')



have been issued but in the same order it has been mentioned that there has been no execution report. Learned counsel further submits that the petitioners were not having any knowledge about the proceeding taken place before the learned trial court and even on the record of learned trial court there is no execution report of even warrants, bailable or non-bailable. Learned counsel further submits that the Co-ordinate Bench of this Court, in the case of ***Santosh Yadav @ Santosh Kumar Yadav***, in its order dated 04.07.2022 passed in Cr. Misc. No. 38750 of 2021, has discussed a number of decisions of the Hon'ble Supreme Court including Constitution Bench decision in the case of ***Gurbaksh Singh Sibbia etc. Vs. The State of Punjab*** reported in ***AIR 1980 SC 1632*** apart from discussing the cases of ***Lavesh Vs. State (NCT of Delhi)*** reported in ***(2012) 8 SCC 730*** and ***State of Madhya Pradesh Vs. Pradeep Sharma*** reported in ***(2014) 2 SCC 171*** and another Constitution Bench decision in the case of ***Sushila Aggarwal and Others Vs. State (NCT of Delhi) and Another*** reported in ***(2020) 5 SCC 1*** and came to the conclusion that anticipatory bail petition 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 of the Cr.P.C. Learned counsel further submits that the Hon'ble Supreme Court in the case of ***Prem Shankar Prasad Vs. State of Bihar & Anr.*** reported in ***(2022) 12 SCC 516*** set aside the orders of Patna High Court considering the facts and circumstances of that case and the same cannot be applicable in the present facts and circumstances of the case and even in Prem Shankar Prasad case the Hon'ble Supreme Court has not held that the anticipatory bail petition was not maintainable if process under Section 82 of the Cr.P.C. was issued. Learned counsel further submits that even the Hon'ble Supreme Court in the case of ***State of Madhya Pradesh Vs. Pradeep Sharma*** (supra) observed in paragraphs 14 to 16 as under:

“14. In order to answer the above question, it is desirable to refer to Section 438 of the Code which reads as under:

‘438. Direction for grant of bail to person apprehending arrest.- (1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that court may, after taking into consideration, inter alia, the following factors, namely-



(i) the nature and gravity of accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) the possibility of the applicant to free from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

either reject the application forthwith or issue an interim order for the grant of anticipatory bail.

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer-in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.'

The above provision makes it clear that the power exercisable under Section 438 of the Code is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty.



15. In *Adri Dharan Das v. State of W.B.* - this Court considered the scope of Section 428 of the Code as under : (SCC pp. 311-12, para 16)

‘16. Section 438 is a procedural provision which is concerned with the personal liberty of an individual who is entitled to plead innocence, since he is not on the date of application for exercise of power under Section 438 of the Code convicted for the offence in respect of which he seeks bail. The applicant must show that he has “reason to believe” that he may be arrested in a non-bailable offence. Use of the expression “reason to believe” shows that the belief that the applicant may be arrested must be founded on reasonable grounds. Mere “fear” is not “belief” for which reason it is not enough for the applicant to show that he has some sort of vague apprehension that someone is going to make an accusation against him in pursuance of which he may be arrested. Grounds on which the belief of the applicant is based that he may be arrested in non-bailable offence must be capable of being examined. If an application is made to the High Court or the Court of Session, it is for the court concerned to decide whether a case has been made out for granting of the relief sought. The provisions cannot be invoked after arrest of the accused. A blanket order should not be generally passed. It flows from the very language of the section which requires the applicant to show that he has reason



to believe that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. Normally a direction should not issue to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever". Such "blanket order" should not be passed as it would serve as a blanket to cover or protect any and every kind of allegedly unlawful activity. An order under Section 438 is a device to secure the individual's liberty, it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations likely or unlikely. On the facts of the case, considered in the background of the legal position set out above, this does not prima facie appear to be a case where any order in terms of Section 438 of the Code can be passed.'

16. Recently, in *Lavesh v. State (NCT of Delhi)*, this Court (of which both of us were parties) considered the scope of granting relief under Section 438 vis-a-vis a person who was declared as an absconder or proclaimed offender in terms of Section 82 of the Code. In para 12, this Court held as under : (SCC p. 733).

'12. 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 a proclaimed offender in terms of Section 82 of the Cr.P.C. he is not entitled to the relief of anticipatory bail.’

Thus, considering the criminal antecedent and non-serious nature of accusation and other conditions as prescribed for grant of anticipatory bail, the petitioners deserve to be enlarged on anticipatory bail.

5. Learned APP as well as learned counsel appearing on behalf of the complainant-opposite party no. 2 vehemently oppose the submission made on behalf of the petitioners. Learned counsel for the complainant submits that the conduct of the petitioners did not entitle them to seek anticipatory bail from this Court as the petitioners were having knowledge still they chose not to appear before the learned trial court for grant of bail and thereafter, process under Sections 82 and 83 of the Cr.P.C. have been initiated against the petitioners and considering the ratio laid down in the cases of *Prem Shankar Prasad* (supra) and in the case of *State of Haryana Vs. Dharamraj* reported in *2023 SCC Online 1085*, after



issuance of process under Sections 82 and 83 of the Cr.P.C., the petitioners are not entitled for anticipatory bail.

6. Having regard to the facts and circumstances, certain aspects of the matter are required to be taken note of. Cognizance against the petitioners have been taken under Sections 498A/34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act on 16.09.2019 and thereafter summons was issued on 15.10.2019, bailable warrant was issued on 22.04.2022, non-bailable warrant was issued on 28.07.2022, process under Section 82 of the Cr.P.C. was issued on 16.05.2023 and lastly process under Section 83 of the Cr.P.C. was issued on 11.09.2023. However, one striking aspect of the matter is that there is no execution report either of warrants or the processes under Sections 82 and 83 of the Cr.P.C. In the case of ***Prem Shankar Prasad Vs. State of Bihar & Anr.*** (supra) and ***State of Haryana Vs. Dharamraj*** (supra) the Hon'ble Supreme Court has deprecated the tendency of entertaining anticipatory bail application of the applicants who are declared proclaimed offender. But even in these two cases, the Hon'ble Supreme Court has nowhere said that an application under Section 438 of the Cr.P.C. would be barred and not maintainable if process under Section 82 of Cr.P.C. has been issued and a person has



been declared absconder.

7. The learned Co-ordinate Bench of this Court in the case of ***Santosh Yadav*** (supra), after discussing a number of decisions of Hon'ble Supreme Court came to the conclusion 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 of the Cr.P.C. It is pertinent to mention here that while discussing the case law, the learned Co-ordinate Bench also discussed the cases of ***Gurbaksh Singh Sibbia Vs. The State of Punjab*** (supra) and ***State of Madhya Pradesh Vs. Pradeep Sharma*** (supra) which was later on relied by the Hon'ble Supreme Court in the case of ***Prem Shankar Prasad Vs. State of Bihar & Anr.***(supra) which was subsequently relied on by the Hon'ble Supreme Court decision in the case of ***State of Haryana Vs. Dharamraj*** (supra). It is further pertinent to note that in **Santosh Yadav's** case (supra), the learned Co-ordinate Bench has extensively quoted the decision of Hon'ble Supreme Court in the case of ***Gurbaksh Singh Sibbia Vs. The State of Punjab*** which was subsequently relied by another Constitution Bench of Hon'ble Supreme Court in the case of ***Sushila Aggarwal and others Vs.***



State (NCT of Delhi) and another (supra) and ***Gurbaksh Singh Sibbia Vs. The State of Punjab*** (supra) the Hon'ble Supreme Court has held that the anticipatory bail application is maintainable even after filing of charge sheet or till person is not arrested.

8. In the light of these facts and various decisions of the Hon'ble Supreme Court, this Court is in respectful agreement with the view taken by the learned Co-ordinate Bench and hold that the anticipatory bail application is maintainable even after issuance of process under Section 82 of the Cr.P.C. However, the conduct of the accused and other facts becomes important for entitlement of a person for grant of anticipatory bail in such cases where process under Sections 82 and 83 of the Cr.P.C. have been issued. If a person against whom a warrant has been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Cr.P.C., he is not entitled to the relief of anticipatory bail. In other words there must be willful act of disobedience of the processes of the court. However, at the same time, it is to be reminded that the processes under Sections 82 and 83 of the Cr.P.C. are transient in nature and are means to secure



appearance of accused before the court and thereafter, Sections 84, 85 and 86 of the Cr.P.C. deals with claims and objections to attachment, release, sale and restoration of attached property and appeal from order rejecting application for restoration of attached property, respectively. These provisions further clarify the temporary nature of proceeding under Sections 82 and 83 of the Cr.P.C. Infraction of personal liberty of an individual on the basis of such temporary provision would run counter to the scheme of Section 438 of the Cr.P.C. and hence an application under Section 438 of the Cr.P.C. would be maintainable.

9. Now coming back to the facts of the present case, it is apparent that the petitioners ordinarily reside outside the jurisdiction of the court which has issued process under Sections 82 and 83 of the Cr.P.C. or earlier issued bailable and non-bailable warrants and further there is no execution report so the whole process becomes suspect. So there may not be any willful disobedience of the processes of the learned trial court. Even the occurrences are stated to have taken place outside the jurisdiction of the learned trial court in seisin the matter. It is also apparent that the allegations are mostly general, vague and omnibus against the petitioners, who are in-laws of the complainant.



10. Thus, in the light of facts and circumstances of the case and discussion made hereinabove, let the petitioners above named, in the event of their arrest or surrender before the court concerned within a period of eight weeks from today, be released on bail, on furnishing bail bonds of Rs.10,000/- (Rupees Ten Thousand Only) each with two sureties of the like amount each to the satisfaction of learned S.D.J.M., Nalanda at Biharsharif/concerned court in connection with Complaint Case No. 168C of 2018, subject to the condition as laid down under Section 438(2) of the Code of Criminal Procedure and other following conditions:

- (i) One of the bailors will be a close relative of the petitioners.
- (ii) The petitioners will remain present on each and every date fixed by the court below, if so required by the learned trial court.

(Arun Kumar Jha, J)

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