

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16420 of 2024

Arising Out of PS. Case No.-494 Year-2022 Thana- BARUN District- Aurangabad

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1. SONI GUPTA WIFE OF VINOD PRASAD R/O - KASMAR, P.S. - PRATAPAPUR, DISTT. - CHATRA, JHARKHAND
 2. VINOD PRASAD SON OF LATE RAJENDRA PRASAD R/O - KASMAR, P.S. - PRATAPAPUR, DISTT. - CHATRA, JHARKHAND

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Shri Vikash Kumar Pankaj, Advocate
For the State	:	Shri Anjani Kumar, A.A.G.-IV Shri Chandra Bhushan Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 29-02-2024 1. Heard learned counsel for the petitioner, Shri Anjani Kumar learned A.A.G.-IV, Shri Chandra Bhushan Prasad learned A.P.P. for the State and the learned counsel for the informant.

2. Learned A.A.G.-IV submits that on account of programme of the Hon'ble Prime Minister at Aurangabad on 02.03.2024, the Superintendent of Police, Aurangabad could not come to the Court as she is involved in the security arrangement and for that letter no. 193, dated 28.02.2024 has been shown to the Court along with the enclosure of the programme.

3. It is next submitted that the Superintendent of Police, Aurangabad is being represented by the Dy. S.P., HQ, Aurangabad.



4. The case reflects pathetic attitude of the police as well as the learned Magistrate for the reason recorded hereinafter.

5. The Court completely fails to appreciate that when the learned A.D.J.-III, Aurangabad had granted no coercive action in favour of the petitioner on 16.01.2024 till 29.01.2024 then on what basis the Investigating Officer of the case filed an application before the learned Magistrate seeking process under Section 82 Cr.P.C. and the learned Magistrate also issued the same in a mechanical manner.

6. Learned A.A.G.-IV submits that no doubt a mistake has been committed by the Investigating Officer of the case by seeking process under Section 82 Cr.P.C. when already the learned A.D.J.-III, Aurangabad by his order dated 16.01.2024 had granted no coercive action against the petitioner and the said order was in force till 29.01.2024, but then it is submitted that the Investigating Officer of the case was not aware of the order dated 16.01.2024 as such he filed an application seeking process under Section 82 Cr.P.C. but further in the same breath submits that even the learned Magistrate acted in a mechanical manner and issued the process under Section 82 Cr.P.C. Learned A.A.G.-IV next submits that the law is clear that process under



Section 82 Cr.P.C. is to be issued for ensuring presence of the accused before the Court and not for aiding the police in investigation. It is also submitted that the Hon'ble Supreme Court in the case of **Arnesh Kumar Vs. State of Bihar and Another** reported in **(2014) 8 SCC 273** had already given direction that how the police is to act in cases involving punishment of seven years and less with or without fine. It is further submitted that thereafter the Hon'ble Supreme Court in the case of **Md. Asfak Alam vs. State of Jharkhand and Another** reported in **2023 Live Law (SC) 583** reiterated the principles laid down in **Arnesh Kumar's** case (supra) and thereafter this Court also by order dated 13.02.2024 in Cr. Misc. No. 3536 of 2024 (**Naushad Ansari Vs. The State of Bihar**) had given direction that the order of the Hon'ble Supreme Court has to be followed in its letter and spirit failing which action would be initiated against the erring police officials and the learned Magistrate in terms of the Memo No. 62973 dated 19.09.2023 issued by this Court in compliance of the order passed by the Hon'ble Supreme Court in **Md. Asfak Alam's** case (supra).

7. Learned A.A.G.-IV submits that the Investigating Officer of the case has realized his mistake and he undertakes



that such mistake will not be repeated in future. It is further submitted that an application shall be filed before the learned Magistrate seeking recall of process under Section 82 Cr.P.C.

8. The learned A.A.G.-IV relying on letter no. 193 dated 28.02.2024 issued by the Superintendent of Police, Aurangabad along with enclosures submits that since the Hon'ble Prime Minister of India is going to hold a public meeting at Aurangabad on 02.03.2024 as such the Superintendent of Police, Aurangabad is busy in making security arrangement for which there is a meeting today with the concerned officials who oversee the security of the Hon'ble Prime Minister but then submits that the Superintendent of Police, Aurangabad is being represented by the Dy. S.P., HQ, Aurangabad.

9. In view of the explanation furnished by the learned A.A.G.-IV with regard to non-appearance of the Superintendent of Police, Aurangabad is accepted.

10. Since it has been submitted by the learned A.A.G.-IV that the Investigating Officer of the case will promptly file an application seeking recall of the process issued under Section 82 Cr.P.C. as such the present anticipatory bail application is being disposed of in terms of the order dated 13.02.2024 in Cr. Misc.



No. 3536 of 2024 as the offences for which the FIR has been instituted carry punishment of seven years and less.

11. The petitioner would be at liberty to file a representation before the Superintendent of Police, Aurangabad and the Investigating Officer of the case with a web copy of the order dated 13.02.2024 in Cr. Misc. No. 3536 of 2024 within a period of three weeks from today and the Superintendent of Police shall ensure that the Investigating Officer of the case strictly adheres to the direction contained in the order dated 13.02.2024 in Cr. Misc. No. 3536 of 2024.

12. The personal appearance of the Dy. S.P., HQ, Aurangabad and the Investigation Officer of the case is dispensed with.

(Satyavrat Verma, J)

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