

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25743 of 2024**

Arising Out of PS. Case No.-118 Year-2024 Thana- GOPALGANJ TOWN District-
Gopalganj

Mahtab Alam @ Lal Babu Son Of Mahammad Zaad Resident Of Mohalla -
Takiya Yakub, P.S. - Gopalganj, District - Gopalganj

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. P. N. Shahi, Sr. Advocate
Mr.Niranjan Kumar, Advocate
For the State : Mr. Shyam Kumar Singh, APP

**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER**

4 08-07-2024 Heard Mr. P. N. Shahi, learned senior counsel for the

petitioner; learned APP for the State and learned counsel for the

informant.

2. The petitioner has moved the Court for the

following reliefs:

“That, this application is being preferred on behalf of the petitioner above named for quashing of the order dated 04.03.2024 passed by the learned Court of Chief Judicial Magistrate, Gopalganj, whereby and whereunder the learned Chief Judicial Magistrate, Gopalganj has mechanically and erroneously issued the direction for proclamation under Section-82 of the Code of Criminal Procedure, 1973 in teeth of the provisions of the Cr. P.C. in connection with Gopalganj P.S. Case No. 118/2024 dated 13.02.2024 registered for offences under Sections 302/120B/34 of IPC, although petitioner is availing his remedy embodied



under the provision of Cr. P.C. and Constitution of India by filing Anticipatory Bail application under Section-438 of Cr. P.C. and also filing Cr. W.J.C. No. 541/2024 before the Hon'ble Patna High Court, Patna, in the interest of justice. And also to quash the application of the Investigating Officer dated 24.02.2024, by which illegally and hurriedly made prayer for issuance of direction under Section-82 & 83 jointly of the Cr. P.C. within 15 days of lodging the alleged FIR and further be pleased to stay the operation of the order dated 04.03.2024 in connection with Gopalganj P.S. Case No. 118/2024.”

3. It has been submitted by learned senior counsel for the petitioner that the impugned orders dated 04.03.2024 and 26.04.2024 have illegally been issued as the same are in teeth of the law laid down by the Hon'ble Supreme Court in the case of ***State through CBI v. Dawood Ibrahim Kaskar & Ors.*** reported in ***(2000) 10 SCC 438*** and ***Krishna Murari Yadav vs. State of Bihar*** reported in ***2005(3) PLJR 746***.

4. Learned counsel for the opposite party no. 2 has submitted that he has no objection if the illegal orders are quashed with liberty to pray for fresh process in accordance with law.

5. In these circumstances, with consent of the parties, this application is allowed.

6. Accordingly, the impugned orders dated 04.03.2024 and 26.04.2024 are quashed with liberty to the prosecution to



file fresh requisition in accordance with law. If and when the prosecution files such application, the Magistrate shall pass an order after going through the judgment of this Court in the case of *State through CBI v. Dawood Ibrahim Kaskar* (supra) and *Krishna Murari Yadav* (supra).

7. Learned counsel for the opposite party no. 2 has submitted that the police has all powers to arrest an accused for the offence punishable under Section 302 of the Indian Penal Code and therefore, even if no process is issued still the police can arrest an accused.

(Sandeep Kumar, J)

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