

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41993 of 2024

Arising Out of PS. Case No.-141 Year-2024 Thana- KATIHAR NAGAR District- Katihar

Chhotu Paswan Son of Late Nawal Kishore Paswan Resident of Mohalla -
Driver Tola Katihar, Police Station - Nagar Katihar, District - Katihar

... .. Petitioner

Versus

1. The State of Bihar
2. Dinesh Paswan, Son of Late Gorelall Paswan, Resident of Village - Driver
Tola, Police Station – Town Katihar, District - Katihar

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. N.K. Agarwal, Sr. Advocate
	:	Mr. Mazharul Hassan, Advocate
	:	Mr. Kumar Rajdeep, Advocate
For the Informant	:	Mr. Y.C. Verma, Sr. Advocate
	:	Mr. Satish Kumar Sinha, Advocate
	:	Mr. Ashok Kumar Sinha, Advocate
For the Opposite Party	:	Mr. Ram Sumiran Rai, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 05-06-2024 Since the informant has already entered appearance
on his own, let the informant be added as O.P. No. 2 in course of
the day.

2. Heard Mr. N.K. Agarwal, learned Senior counsel
assisted by Mr. Mazharul Hassan, learned counsel for the
petitioner, Mr. Y.C. Verma, learned Senior counsel assisted by
Mr. Satish Kumar Sinha, learned counsel for the informant and
Mr. Ram Sumiran Rai, learned A.P.P. for the State.

3. Petitioner in this case is seeking quashing of the
order dated 03.05.2024 passed by learned Chief Judicial
Magistrate, Katihar in Katihar Nagar P.S. Case No. 141 of 2024



registered for the offences punishable under Sections 302 and 120(B)/34 of the Indian Penal Code.

4. Learned Senior counsel for the petitioner submits that in the present case, the learned Chief Judicial Magistrate, Katihar has directed issuance of proclamation under Section 82 Cr.P.C. but before exercising his power under Section 82 Cr.P.C., he has not applied his judicious mind and the requirements as envisaged under Section 82 Cr.P.C. have not been considered. It is submitted that on filing of application by the Investigating Officer, the learned Chief Judicial Magistrate passed a one line order saying that the he has perused the application and the Office would issue the proclamation against the petitioner.

5. Learned Senior counsel submits that Section 82 Cr.P.C. mandates that the Court must have reason to believe that any person against whom a warrant has been issued by it is absconding or is concealing himself so that such warrant cannot be issued. In the present case, according to him, the petitioner had applied for anticipatory bail in the Court of learned Sessions Judge, Katihar *vide* A.B.P. No. 363 of 2024 which has been disposed of on 06.05.2024. Immediately thereafter, the petitioner has moved this Court in Criminal Miscellaneous No.



37713 of 2024 and the same is pending consideration but because of the summer vacation, it has not been taken up for consideration.

6. Learned Senior counsel, therefore, submits that when the petitioner is seeking his remedy before this Court and he is not at fault, there is no reason for the learned Chief Judicial Magistrate to direct issuance of proclamation under Section 82 Cr.P.C.

7. Mr. Y. C. Verma, learned Senior counsel for the informant-opposite party no.2, submits that on perusal of the order dated 03.05.2024 it appears that the learned Chief Judicial Magistrate has not recorded his reasons to believe that the petitioner is absconding or that he is not likely to appear in this case. Learned Senior counsel submits that in such circumstance, the petitioner could have filed an appropriate application in the court of learned CJM and informed the court about the pendency of the anticipatory bail application and could have prayed for stay of the execution of the proclamation but he has not chosen to do so. Towards the end of his submissions, learned Senior counsel submits that in order to facilitate an early decision in the matter as to whether it is a fit case for issuance of proclamation or not, he would propose that the order dated



03.05.2024 be set aside at this stage and the learned Chief Judicial Magistrate, Katihar be directed to pass a fresh order keeping in view the mandate of Section 82 Cr.P.C.

8. Learned APP for the State has endorsed the submissions of learned Senior counsel for the informant-opposite party no.2.

9. Having regard to the aforementioned submissions and the agreement between the parties that the order dated 03.05.2024 may be set aside, this Court sets aside the impugned order dated 03.05.2024 passed by learned Chief Judicial Magistrate, Katihar in Katihar Nagar P.S. Case No. 141 of 2024 leaving it open for the learned CJM, Katihar to pass a fresh order in accordance with the requirements of Section 82 Cr.P.C.

(Rajeev Ranjan Prasad, J)

Gaurav/Rishi-

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