

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59892 of 2024

Arising Out of PS. Case No.-354 Year-2021 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Maya Sinha, W/o Late Mahendra Prasad Singh Resident of Village- Simra, PS- Parsa Bazar, Distt. - Patna
 2. Dhiraj Kumar Singh S/o Late Mahendra Prasad Singh Resident of Village- Simra, PS- Parsa Bazar, Distt. - Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Renu Devi W/o Purusotam Kumar Sao R/o vill - Mainpura, P.S. - Danapur, Distt. - Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Suresh Prasad, Advocate.
For the Opposite Party/s	:	Mr. Ajit Kumar, APP.
For the Complainant	:	Mr. Abhigyan Kumar, Advocate.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 11-09-2024 Heard Mr. Suresh Prasad, learned Counsel appearing on behalf of the petitioner; Mr. Ajit Kumar, learned APP for the State and Mr. Abhigyan Kumar, learned counsel for the informant.

2. The petitioner seeks pre-arrest bail in connection with complaint Case No. 354 of 2021 registered for the offence(s) punishable under Sections 406 and 420/34 of the Indian Penal Code.

3. As per the allegation made in the complaint, the petitioner had received Rs. 7,00,000/- from the complaint as a consideration money to sell a piece of land appertaining to Thana No.23, Ward No.12, Mahal No. 01, located at Mohalla –



Saguna Mode, P.S. - Danapur, District – Patna and thereafter the petitioner has refused to register the said land in favour of the complainant nor had returned the money.

4. Mr. Suresh Prasad, learned counsel appearing on behalf of the petitioner, at the outset, submitted that the petitioner has not been declared proclaimed offender as on date and only process under Section 82 Cr.P.C. has been ordered to be issued against the petitioner, though he admits that he is not aware of the present status of the trial. Learned counsel further submitted that considering the nature of allegation made in the complaint, no case is made out under Sections 406 and 420 of the Indian Penal Code. The complainant, instead of filing a Civil Suit for specific performance of contract, has filed the present complaint to pressurize the petitioner on false accusations. The amount which was transferred in the bank account of the petitioner has been returned back to the complainant. He further submits that the petitioner no.1 is a widow lady and petitioner no.2 is her son against whom there is no allegation that he was also involved in the alleged transaction or have committed any forgery.

5. Mr. Abhigyan Kumar, learned counsel has tendered his appearance on behalf of the complainant and has submitted



that no money has been transferred into the account of the complainant as has been claimed by the petitioner. The Bank account in which the petitioner has claimed that he has transferred the amount don't belong to the complainant and the same can be verified from the concerned Bank. Learned counsel has further relied on a judgment of Hon'ble Supreme Court rendered in the case of **Srikant Upadhyay & Ors. Vs. State of Bihar & Anr.** reported in **(2024) AIR (SC) 1600**, wherein it has been held that once process under Section 82 Cr.P.C. has been issued and the petitioner having declared a proclaimed offender, anticipatory bail is not maintainable.

6. Learned APP for the State has opposed the prayer for grant of pre-arrest bail to the petitioner and supported the submission made on behalf of the complainant.

7. The Complainant has alleged that the petitioner has received a sum of Rs. 7 lacs and the petitioner has claimed that he has already returned back the amount which she has received through Bank transaction in the account of the complainant. The complainant has denied the said fact on the basis of the claim that the bank account in which the petitioner has transferred belongs to someone else and the petitioner cannot take help of the fact that the transaction which has been made into the said



account belongs to the complainant. The agreement to sell is dated 10.11.2017. Instead of the said fact, the complainant has not resorted to civil remedy by filing a suit for specific performance of Contract. The dispute having purely civil in nature, I find it gainful to reproduce the law laid down by the Apex Court in paragraphs no. 9, 10 and 11 in the case of ***Bimla Tiwari vs. State of Bihar & Ors.*** passed in ***SLP (Crl.) Nos. 834-835 of 2023.***

“9. We have indicated on more than one occasion that the process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings but what has been noticed in the present case carries the peculiarities of its own.

10. We would reiterate that the process of criminal law cannot be utilised for arm-twisting and money recovery, particularly while opposing the prayer for bail. The question as to whether pre-arrest bail, or for that matter regular bail, in a given case is to be granted or not is required to be examined and the discretion is required to be exercised by the Court with reference to the material on record and the parameters governing bail considerations. Putting it in other words, in a given case, the concession of pre-arrest bail or regular bail could be declined even if the accused has made payment of the money involved or offers to make any payment; conversely, in a given case, the concession of pre-arrest bail or regular bail could be granted irrespective of any payment or any offer of payment.

11. We would further emphasize that, ordinarily, there is no justification in adopting such a course that for the purpose of being given the concession of pre-arrest bail, the person apprehending arrest ought to make payment. Recovery of money is essentially within the realm of civil proceedings.”

8. The next question arises as to whether this Court in exercise of extraordinary jurisdiction under Section 438 Cr.P.C. after the court had directed to issue process under Section 82 Cr.P.C. has jurisdiction to entertain anticipatory bail.



9. In this regard, I find it proper to reproduce the law laid down by the Apex Court in Paragraph Nos. 10 to 17 in the case of **Srikant Upadhyay (supra)**, which has been relied by the learned counsel appearing on behalf of the complainant.

“10. When a Court grants anticipatory bail what it actually does is only to make an order that in the event of arrest, the arrestee shall be released on bail, subject to the terms and conditions. Taking note of the fact the said power is to be exercised in exceptional circumstances and that it may cause some hinderance to the normal flow of investigation method when called upon to exercise the power under Section 438, Cr. P.C., courts must keep reminded of the position that law aides only the abiding and certainly not its resistant. By saying so, we mean that a person, having subjected to investigation on a serious offence and upon making out a case, is included in a charge sheet or even after filing of a refer report, later, in accordance with law, the Court issues a summons to a person, he is bound to submit himself to the authority of law. It only means that though he will still be at liberty, rather, in his right, to take recourse to the legal remedies available only in accordance with law, but not in its defiance. We will dilate this discussion with reference to the factual matrix of this case. However, we think that before dealing with the same, a small deviation to have a glance at the scope and application of the provisions under Section 82, Cr. P.C. will not be inappropriate.

11. There can be little doubt with respect to the position that the sine qua non for initiation of an action under Section 82, Cr. P.C. is prior issuance of warrant of arrest by the Court concerned. In that regard it is relevant to refer to Section 82 (1), Cr. P.C., which reads thus:—

“82. Proclamation for person absconding.

— (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.”

12. The use of expression ‘reason to believe’ employed in Section 82(1) Cr. P.C. would suggest that the Magistrate concerned must be subjectively satisfied that the person concerned has absconded or has concealed himself. In the context of Section 82, Cr. P.C., we will have to understand the importance of the term ‘absconded’. Its etymological and ordinary sense is that one who is hiding himself or concealing himself and avoiding arrest. Since the legality of the proceedings



under Section 82, Cr. P.C. is not under challenge, we need not go into that question. As noticed above, the nub of the contentions is that pending the application for pre-arrest bail, proclamation under Section 82, Cr. P.C., should not have been issued and at any rate, its issuance shall not be a reason for declining to consider such application on merits. Bearing in mind the position of law revealed from the decisions referred to hereinbefore and the positions of law, we will briefly refer to the factual background of the case.

13. For considering the aforesaid proposition of law, we think it absolutely unnecessary to deal with FIR No. 37 of 2018 dated 28.03.2018 filed against Respondent No. 2, Mr. Rajiv Kumar Upadhyay and four others, and also FIR No. 66 of 2018 registered against appellant No. 4 (first accused) and four other family members of the appellants. Civil Suit No. 140 of 2019 filed against the family members of the appellants for illegal encroachment is also not to be considered as nothing would turn out of it in relation to the question posed for consideration. We may hasten to add that if the question whether the appellants are entitled to anticipatory bail survives, even after answering the aforementioned question(s) posed for consideration, we may refer to the relevant aspects in relation to the said cases.

14. As noticed hereinbefore, the appellants herein moved the application for anticipatory bail in connection with FIR No. 79 of 2020 registered at Govindgunj Police Station. It is a fact that the subject FIR was registered pursuant to the directions of the learned Chief Judicial Magistrate, East Champaran, Motihari on complaint No. 395 of 2020 filed by Respondent No. 4 under Section 156 (3), Cr. P.C. The allegations in the complaint are as follows:—

On 22.02.2020, at about 8.00 am, when Jagmati Kunwar, the grandmother of respondent No. 4 reached in front of the house of appellant No. 2, Shashikant Upadhyay, he said that she is the witch who made his child sick and shall not be spared. Then, the appellants and eight other family members gathered around her and the 4th appellant caught hold of her hair and asked the others to bring dung. Thereupon, accused Paritosh Kumar brought dung and accused Rishu put dung into the mouth of Jagmati Kunwar. Consequently, she vomited and fell down. When respondent No. 2/complainant and other witnesses went for her help, the second appellant Shashikant Upadhyay assaulted and abused respondent No. 2. Co-accused Paritosh Kumar and Jishu Kumar tore the blouse of Kiran Devi and she was disrobed. Another co-accused Soni Devi snatched a gold chain from the complainant. The co-accused Ravikant and appellant No. 5 tore the clothes of Jagmati



Kunwar and made her half-naked.

15. Later, after completing the investigation, charge sheet was filed on 08.08.2022 only for offences under Sections 341, 323 and 504 IPC, that too only against accused Lakhpatri Kunwar (accused No. 7). However, the learned Trial Court, on perusal of the FIR, charge sheet and case diary found that sufficient materials are available in the case diary to proceed against the other 12 accused, including the appellants herein and accordingly vide order dated 20.02.2021 took cognizance of the offences under Sections 341, 323, 354B, IPC and Section 3/4 of the Daain Act and issued summons to all accused including the appellants and fixed 12.04.2022 as the date for their appearance. The accused were absent on that day and hence on 12.04.2022, the Trial Court issued bailable warrants. On 25.05.2022, the accused, other than the appellants herein, appeared and applied for regular bail before the Trial Court and the Trial Court granted them regular bail. Subsequently, the complainant/the second respondent herein, applied for cancellation of bail granted to them and as per the order dated 09.06.2022 the grantees of bail were issued with show cause notices. Upon receiving the notice for cancellation of bail, they unsuccessfully approached the Sessions Court challenging the order taking cognizance, in Criminal Revision Petition No. 94 of 2022. Pursuant to the dismissal of the Revision Petition, the Trial Court posted the application for cancellation of bail on different dates. The fact is that despite such developments, the appellants herein neither appeared before the Trial Court nor sought for regular bail. In the meanwhile, the appellants herein moved a bail-cum-surrender application (described as such by them), before the Trial Court. However, it was withdrawn on 23.08.2022 on the fear of arrest. Thereupon, the Trial Court fixed the date for appearance of the appellants on 30.08.2022. Before the date fixed for their appearance, the appellants filed application for anticipatory bail before the Sessions Court and, thereafter on 06.09.2022, informed the Trial Court about its listing before the Sessions Court on 27.09.2022 for final hearing. The Trial Court thereupon posted the matter for appearance of the appellants to 11.10.2022. The anticipatory bail moved by the appellants was dismissed on 27.09.2022 and thereupon, the Trial Court took up the matter on 03.11.2022. Since the appellants remained absent, the Trial Court issued non-bailable warrants and listed the matter to 04.11.2022 for their production. Meanwhile, the appellants herein approached the High Court by filing CRLM No. 67668 of 2022 seeking anticipatory bail. It is to be noted that nonbailable warrants were pending against them when they moved the said application for anticipatory bail. On 04.12.2022, on behalf of the appellants, the Trial Court was informed about the filing of anticipatory bail application before the High Court. Consequently, the matter was listed on



04.01.2023. On 04.01.2023, pursuant to the non-appearance of the appellants despite the earlier order for their appearance and the issuance of non-bailable warrants, the Trial Court issued proclamation under Section 82(1), Cr. P.C. Later, proceedings under Section 83, Cr. P.C. were also initiated. On 15.03.2023, on behalf of the appellants it was prayed to postpone the process under Section 82/83, Cr. P.C. However, the Trial Court proceeded to issue the process under Section 83, Cr. P.C., based on the proclamation under Section 82(1) Cr. P.C. On 04.04.2023, the application for anticipatory bail filed by the appellants was dismissed, obviously taking note of the proceedings under Sections 82/83, Cr. P.C. and observing that owing to such developments the application for pre-arrest bail could not be maintained.

16. The core contention of the appellants is that the rejection of the application for anticipatory bail without considering the application on merits for the reason of issuance of proclamation under Section 82, Cr. P.C., is unsustainable. It is further contended that at no stage, the appellants were “evading the arrest” or “absconding” but were only exercising their legal right to seek anticipatory bail. It is in the aforesaid circumstances that the learned Senior Counsel appearing for the appellants raised the contention that when an application for anticipatory bail is pending, the issuance of proclamation, following issuance of nonbailable warrant could not be a reason for non-considering the application for anticipatory bail on merits.

17. For a proper consideration of the aforesaid contentions and allied questions, it is only appropriate to refer to certain provisions of law as also certain relevant decisions. From the chronology of events narrated hereinbefore, it is evident that for reasons best known to the appellants, subsequent to the filing of the final report in terms of the provisions under Section 173 (2), Cr. P.C. in FIR No. 79/2020 and issuance of summons, issuance of bailable warrants and issuance of non-bailable warrants; pursuant to the failure of the appellants to appear before the Court on the date fixed for their appearance based on bailable warrants, they did not care to take any action in accordance with law except moving applications for bail. Same was the position even after the issuance of the proclamation under Section 82, Cr. P.C. As noted earlier, in the case of similarly situated co-accused of the appellants, they appeared and obtained regular bail pursuant to the issuance of bailable warrants. Thus, a scanning of the acts and omissions of the appellants, it can only be seen that virtually, the appellants were defying the authority of law and moving applications for bail when they apprehended arrest owing to their non-attendance and dis-obedience. It is in the context of the aforesaid facts revealed from the materials on record that the contention of the appellants that they were only pursuing their right to file application for anticipatory bail and, therefore, they



were not either evading the arrest or absconding, has to be appreciated.”

10. I also find it profitable to refer the Apex Court judgment in the case of **Prem Shankar Prasad Vs. State of Bihar & Anr.**, reported in **2022 14 SCC 529**.

11. I don’t find that present is a fit case in which this Court can enlarge the petitioner on pre-arrest bail, however, the petitioner no.1 who is a lady aged about 56 years and petitioner no.2 who is son of petitioner no.1 and even on perusal of the complaint, no allegation can be made out against him, may surrender before the District Court and seek regular bail. The learned District Court considering the nature of allegation made against the petitioners which primarily relates to certain transaction of money between the parties with regard to sale of a piece of land belonging to the petitioners in light of the law laid down by the Apex Court in the case of **Bimla Tiwari (supra)** and the learned District Court is directed to hear the bail application of the petitioners on the same day and pass a reasoned order in accordance with law.

12. The bail application stands disposed of.

(Purnendu Singh, J)

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