

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70118 of 2023

Arising Out of PS. Case No.-496 Year-2022 Thana- ROHTAS COMPLAINT CASE District-
Rohtas

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1. Kalavati Devi, aged about 64 years, Female, W/O Shiv Kumar Sharma, R/O Village and P.O and P.S- Koransarai, Ditt.- Buxar.
 2. Dipu Kumar Sharma, aged about 32 years, Male, S/O Shiv Kumar Sharma, R/O Village and P.O and P.S- Koransarai, Ditt.- Buxar.

... .. Petitioners

Versus

1. The State of Bihar
2. Ramchandra Dubey, S/O Late Lallu Dubey, R/O Village and P.O- Dharupur, P.S- Bikramganj, Distt.- Rohtas (Bihar).

... .. Opposite Parties

Appearance :

For the Petitioners	:	Mr. Arvind Kumar Pradhan, Advocate
For the O.P. No. 2	:	M/S. Nagendra Upadhyay, Maya Shankar Mishra and Gopal Krishna Nishant, Advocates
For the State	:	Mr. Anuj Kumar Shrivastava, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

6 04-04-2024 Heard learned counsel for the petitioners, learned counsel for the opposite party no. 2 and learned A.P.P. for the State.

2. The petitioners are apprehending their arrest in connection with Complaint Case No. 496 of 2022 dated 02.08.2022 registered for the offences punishable under Sections 323, 406, 420, 467, 468 and 120B of the I.P.C.

3. As per the prosecution case, the accused persons after taking the complainant in faith for executing a land, received Rs. 6,00,000/-from the complainant and for that the



documents of sale deed was also ready for execution of land with consent of the parties in the Sub Registry Office at Bikramganj, Rohtas but at the time of agreement in registry, the accused persons fled away from the Registry Office after abusing and assaulting the complainant, due to that reason, the registry could not take place. It is further alleged that on several times, the complainant asked the accused persons orally either for returning his money or for executing the land but in vain. Thereafter, the complainant first time on 19.02.2022, sent legal notice to the accused persons but no reply has been given by them. Thereafter, second time on 07.03.2022, legal notice was sent to the accused persons but despite of that no reply was given by them. Lastly third time on 22.03.2022, again legal notice was sent to the accused persons through post but no reply was given by them. Lastly on 31.07.2022, the accused persons refused to return the aforesaid money and they were ready to assault and abuse the complainant.

4. Learned counsel for the petitioners has submitted that the petitioners are innocent and have falsely been implicated in this case. It is submitted that the petitioner no. 1 is the wife and the petitioner no. 2 is the son of the co-accused Shiv Kumar Sharma to which the complainant negotiated the



said land deal which subsequently failed and the petitioners have no concern with the alleged offence. There is general and omnibus allegation against the petitioners. It is further submitted that the amount in question has been returned by the co-accused Shiv Kumar Sharma through one Baliram Sharma to the complainant for which the said Baliram Sharma executed an agreement supported by the Notary Public because the complainant denied to give receipt of receiving amount in question. The said Baliram Sharma is the witness to the complaint petition. The petitioners have clean antecedents as stated in paragraph no. 3 of the bail petition. Learned counsel for the petitioners has submitted that the anticipatory bail application of the petitioners is maintainable even after issuance of the process under Section 82 of the Cr.P.C. Learned counsel for the petitioners has further relied upon the case of (***Santosh Yadav @ Santosh Kumar Vs. The State of Bihar, Cr. Misc. No. 38750 of 2021 arising out of P.S. Case No. 191 year-2021, Thana-Bahadurpur, District-Darbhanga***) disposed of on 04.07.2022) where the Hon'ble Patna High Court has held 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 but then definitely maintainability of an anticipatory bail application after issuance of process under Section 82 is definitely not barred.”

5. Learned A.P.P. for the State and learned counsel for the opposite party no. 2 have vehemently opposed the prayer for anticipatory bail of the petitioners. It has been submitted by learned counsel for the opposite party no. 2 that the anticipatory bail application of the petitioners is not maintainable as the process under Section 82 of the Cr.P.C. has already been issued against the petitioners. It is further submitted that this anticipatory bail application is filed after the issuance of the process u/s 82 of the Cr.P.C. The petitioners are declared a proclaimed offender. Learned counsel for the opposite party no. 2 has further relied upon the case of **(Abhishek vs. State of Maharashtra (2022) 14 SCC 529)** where it was held that “*As regards the implication of proclamation having been issued against the appellant, we have no hesitation in making it clear that any person, who is declared as an ‘absconder’ and remains out of reach of the investigating agency and thereby stands directly at conflict with law, ordinarily, deserves no concession or indulgence.*” Reliance has further been placed on the



decisions of *(Lavesh vs. State (NCT of Delhi) (2012) 8 SCC 730, Adri Dharan Das vs. State of W.B. (2005) 4 SCC 303)* and *(Prem Shankar Prasad vs. State of Bihar 2021 SCC Online SCC 955)* and in the case of *(State of Haryana vs. Dharamraj (Cr. Appeal No. 2635 of 2023 @ out of SLP (Cri.) No. 2256 of 2022, reported in 2023 LiveLaw (SC) 739: 2023 INSC 784)* disposed of 29.08.2023 wherein the Hon'ble Apex Court has held that: "Anticipatory bail can be granted to a person to a proclaimed offender only in exceptional and rare case." It is further submitted that the materials available on the record do not reveal any exceptional or rare case due to which the plea of anticipatory bail may be considered. Learned counsel for the opposite party no. 2 has further relied on the judgment of *Srikant Upadhyay & Ors. Vs. State of Bihar & Anr. SLP (Crl) No. 7940 of 2023.*

6. Considering the aforesaid facts and circumstances of the case as well as the fact that the process under Section 82 of the Cr.P.C. has been issued against the petitioners, the anticipatory bail petition of the petitioners is not maintainable. Accordingly, the same is disposed of with a direction to the petitioners to surrender before the learned court below within a period of six weeks from the date of receipt/production of a



copy of this order and the learned court below may consider the prayer for regular bail of the petitioners in accordance with law and on its own merits without being prejudiced of the order of this Court in connection with Complaint Case No. 496 of 2022, pending in the court of learned Chief Judicial Magistrate, Sasaram, Rohtas.

7. Accordingly, the anticipatory bail application of the petitioners stands disposed of.

(Chandra Prakash Singh, J)

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