

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74890 of 2023

Arising Out of PS. Case No.-60 Year-2009 Thana- SAHPUR District- Bhojpur

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1. Rameshwar Rai S/O Late Ramashish Rai R/O Village- Barisawan, P.S- Shahpur, Distt.- Bhojpur.
 2. Dharmendra Rai S/O Rameshwar Rai R/O Village- Barisawan, P.S- Shahpur, Distt.- Bhojpur.
 3. Shashi Kant Rai S/O Rameshwar Rai R/O Village- Barisawan, P.S- Shahpur, Distt.- Bhojpur.
 4. Lalita Devi W/O Rameshwar Rai R/O Village- Barisawan, P.S- Shahpur, Distt.- Bhojpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Dhananjay Kumar Tiwary, Advocate
For the Opposite Party/s	:	Mr.Prem Kumar Jha, APP
For the Informant/s	:	Mr. Dharnesh Shankar, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

3 04-04-2024 Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State as well as the learned counsel for the informant.

2. Learned counsel for the petitioners submits that the petitioner No. 1 has been arrested. Accordingly, he seeks permission to withdraw the present application.

3. Permission is accorded.

4. Accordingly, the present application of the petitioner No. 1 is dismissed as withdrawn.

5. The petitioners are apprehending their arrest in



connection with Shahpur P.S Case No. 60/2009 dated 19.03.2009 registered for the offences punishable u/ss 304B and 201 read with 34 of the Indian Penal Code.

6. As per the prosecution case, the petitioner and the co-accused persons are alleged to have killed the informant's sister due to non-fulfillment of demand of a motorcycle and Rs. 50,000/- as dowry and her dead body was disappeared.

7. Learned counsel for the petitioners has submitted that the petitioners are innocent and have falsely been implicated in this case. The petitioners have no criminal antecedent as stated in para 3 of the bail petition. There is general and omnibus allegation against the petitioners. The petitioner No. 2 and 3 are brother-in-law and the petitioner No. 4 is mother-in-law of the deceased.

8. Learned A.P.P. for the State as well as the learned counsel for the informant have vehemently opposed the prayer of anticipatory bail of the petitioners by submitting that the prayer of bail of the petitioners have been rejected by the Co-ordinate Bench of this court vide order dated 15.09.2011. passed in Cr. Misc. No. 20528 of 2011. Further, the petitioners have also filed Cr. Misc. No. 31675 of 2011 for quashing the order dated 20.11.2010 passed by learned CJM, Bhojpur issued process after cognizance being taken for the offence punishable u/s 201 and 304B of the IPC and the same was withdrawn by



the petitioners on 03.04.2023. Learned counsel has further submitted that the instant anticipatory bail application is not maintainable as the process u/s 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 petitioner is declared a proclaimed offender. Learned counsel for the informant 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 rate case due to which the plea of anticipatory bail may be considered. Learned counsel for the informant has further relied on the judgment of **Srikant Upadhyay & Ors. Vs. State of Bihar & Anr. SLP (Crl) No. 7940 of 2023.**

9. Considering the aforesaid facts and circumstances of the case as well as the fact that the process u/s 82 has been issued against the petitioners, accordingly, the anticipatory bail petition is not maintainable. Accordingly, the same is disposed of with direction to the petitioner to surrender to the Court below within a period of six weeks from the date of this order and the Court below will consider the prayer of the bail of the petitioner in accordance with law without being prejudice by this order.

10. This application stands disposed of.

(Chandra Prakash Singh, J)

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