

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75312 of 2023

Arising Out of PS. Case No.-2229 Year-2019 Thana- PATNA COMPLAINT CASE District-
Patna

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SARITA DEVI W/O RABINDRA PRASAD @ RABINDRA KUMAR
RESIDENT OF SAVITRI BHAWAN, CHHOTI BADALPURA, NEAR
RAILWAY SCHOOL EASTERN SIDE, PS. KHAGAUL, DIST. PATNA

... .. Petitioner/s

Versus

1. The State of Bihar
2. SHASHI DEVI W/O ASTA NAND SINGH VILLAGE- JAMALUDDIN
CHAK, PS. KHAGAUL, DIST. PATNA

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Kamlesh Kumar, Advocate
For the State	:	Mr. Brajendra Nath Pandey, APP
For the Informant	:	Mr. Abhinav Shandilya, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 29-02-2024 Heard Mr. Kamlesh Kumar, learned Counsel for the

petitioner duly assisted by Mrs. Deep Mala as also Mr.

Brajendra Nath Pandey, learned APP for the State and Mr.

Abhinav Shandilya who represent the informant.

2. The petitioner apprehends her arrest in connection
with Complaint Case No. 2229(c) of 2019 for the offence
registered under sections 406, 341, 323 and 506 of the Indian
Penal Code.

3. The prosecution story read as follows:-

*(i) One, Shashi Devi is the complainant
who entered into an agreement with certain terms
& conditions by constituting a partnership Deed*



dated 18.12.2017 with the petitioner, Sarita Devi to do business and decided for the first time to start the business of spectacles under franchisee of lenskart company and accordingly, the franchisee of Lenskart was obtained and for this purpose, a commercial shop was hired on monthly rent under lease of 5 years on 25.11.2017 with one Mr. Shaiful Arefin in Sumaiya residency situated near Mahavir Cancer Sansthan, Phulwari Sharif.

(ii) the business bank account also open in the SBI branch in the name of firm under name & style "MAA SHITLA ENTERPRISES", operated jointly by the complainant and her partner, Sarita Devi (Petitioner).

(iii) the complainant also narrated that some amount was given to the lenskart company in its account for obtaining the franchisee.

(iv) it is also stated that the loan amount of Rs. 17,38,000/- (seventeen lacs thirty eight thousand) was sanctioned under the scheme of start up India in the name of firm to operate the business.

(v) the complainant further stated that the business properly started from 1 April 2018 and the complainant regularly used to sit with her partner in the shop and business was also look after by Archana Kumari, daughter of petitioner because she working in lenskart company.

(vi) the complainant also narrated that profit a sum of Rs. 1,25,000/- (one lac twenty five



thousand) was earned by the complainant after sometimes in said business but she further said that she used to go on the shop off and on and so, the proper book and accounts has not been provided to her by the partner, so dispute and differences arose between the partners.

(vii) the complainant alleging therein that the last date of occurrence i.e. on 9.5.2019 at about 7 P.M. when her husband, Astanand Singh with witness named in complaint case, went to the shop and on asking regarding book and accounts from the store manager, upon which Aditya Kumar and Archana Kumari who is the son and daughter of Sarita Devi ,the petitioner and 3 unknown persons including so called lover of Archana Kumari started to abuse and beaten by fists and slaps to the husband of the complainant and in this regard, written application given to the concern police station but even after s days neither the F.I.R. was lodge even no inquiry was made by the police.

(viii) the complainant further states that regarding the events, a written complaint was sent to City S.P. through registered post but no action was taken then this complaint case was filed on 30.5.2019 and details of the case referred in the complaint petition itself.

4. Learned Counsel for the petitioner submits that both the petitioner and the complainant were partners putting in



their respective amount for the business. Further, in case of any dispute, the Arbitration clause was always there to resolve the issue. Instead the present compliant was filed with ulterior motive.

5. On the other hand, it is his further submission that the case is purely of civil nature and no criminal liability is there against the petitioner.

6. It has been submitted by learned Counsel appearing on behalf of the informant that the processes under sections 82 and 83 of the Cr.P.C. were already issued, when this petition was filed on 06.11.2023 and he has also taken this Court to an order of co-ordinate bench dated 04.09.2023 in Cr. Misc. No. 32849 of 2023 to show that on this ground alone, the anticipatory bail of another accused, Archana Kumari was rejected.

7. To this, learned Counsel appearing on behalf of the petitioner has cited the case of **Santosh Yadav @ Santosh Kumar Yadav** of Patna High Court to impress upon this Court that even after the issuance of processes under section 82 and 83 of the Cr.P.C., anticipatory bail is maintainable.

8. A single bench of Patna High Court in **Santosh Yadav (supra)** concludes as follows:-



“After hearing the learned counsel for the petitioner and learned A.P.P. for the State, the Court comes to a considered conclusion that anticipatory bail application is maintainable even after issuance of process under Section 82 of the Cr.P.C further the Hon'ble Supreme Court in the case of Gurbaksh Singh Sibbia (Supra) has very clearly laid that anticipatory bail application is maintainable even after filing of charge-sheet or till the person is not arrested, thereafter another Constitution Bench judgment of the Hon'ble Supreme Court in the case of Sushila Aggarwal and Others vs State (NCT of Delhi) and Another (supra) had also placed reliance on the Gurbaksh Singh Sibbia (Supra). Further from the scheme of Cr.P.C. it prima-facie appears that Section 82 of the Cr.P.C. is resorted to only when an accused is trying to flee from justice and Section 83 Cr.P.C. is an additional provision to create more pressure on the accused to surrender since the provision provides for attachment of property but then the said attachment of property is not final and it is subject to Sections 84, 85 and 86 of the Cr.P.C., as aforesaid, further if on objection the attachment order is recalled then definitely it will be presumed that the petitioner no



longer is an absconder because abscondence is a precondition for issuance of an order under Section 83 of the Cr.P.C. thus prima-facie it appears that Sections 82 and 83 are provisions which are provisional in nature and as such a valuable right like personal liberty as enshrined in Article 21 of the Constitution of India cannot be taken away based on a transient provision. The Court is also in agreement with the submission made by the learned counsel for the petitioner that even Section 438 of the Cr.P.C. nowhere bars anticipatory bail application on the ground of issuance of process under Section 82 Cr.P.C. thus the Court holds 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”.

9. This Court is not impressed with the said submissions put forward by the learned Counsel for the petitioner. There has been number of orders/judgments of the Hon’ble Apex Court in which it has been made clear that once



the processes under section 82 and 83 of the Cr.P.C. have been issued, the anticipatory bail of an accused should not be considered and he/she/they shall instead seek bail.

10. The Hon'ble Apex Court in the case of **State of Haryana Vs. Dharamraj [(SLP (Cr.I.) No. 2256 of 2022)]** took note of the case of Hon'ble Supreme Court in **Abhishek vs State of Maharashtra (2022) 8 SCC 282** and it was concluded as follows:

“68. 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. By way of reference, we may observe that in relation to the indulgence of pre-arrest bail in terms of Section 438 CrPC, this Court has repeatedly said that when an accused is absconding and is declared as proclaimed offender, there is no question of giving him the benefit of Section 438 CrPC. [For example, Prem Shankar Prasad v. State of Bihar, (2022 14 SCC 529: 2021 SCC Online SC 955]”.

17. Accordingly, in view of the



discussions made hereinabove, the Impugned order granting anticipatory bail to the respondent is set aside. The respondent shall surrender before the Court concerned within four weeks from today and may seek regular bail which will be considered on its own merits without being prejudiced by the present judgment.”

11. From the aforesaid facts, it is clear that once the processes under sections 82 and 83 of the Cr.P.C. have been issued against the accused, the natural course of action for him/her is to take recourse to bail.

12. The anticipatory bail cannot be extended to the petitioner in such circumstances. It is accordingly rejected.

(Rajiv Roy, J)

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