

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.83157 of 2023

Arising Out of PS. Case No.-688 Year-2022 Thana- JEHANABAD COMPLAINT CASE
District- Jehanabad

=====

Niraj Kumar S/o Late Satyendra Prasad R/o Mohalla-Bari Sangat, Jehanabad,
P.S and District-Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Shivani Kumari S/o Omkar Nath Keshari R/o Mohalla-Mahila Thana Road,
P.S and District-Gopalganj.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr.Kalpana
For the Opposite Party/s	:	Mr.Nagendra Prasad
For the Informant	:	Mr. Sudhanshu Shekhar

=====

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL ORDER

4 05-03-2024 Heard the learned counsel for the petitioner as well as the
learned APP for the State.

2. The petitioner apprehends his arrest in connection with
Complaint Case No. 688 of 2022 registered for the offences
under Sections 323, 341, 354, 376, 504 of the Indian Penal
Code.

3. At the very outset, the learned APP has submitted that it
transpires from the report of the court below that the process under
Section 82 & 83 of the Cr. P.C. has been executed and in view of the
recent decision in the case of *Prem Shankar Prasad vs. State of
Bihar and Another (2021 SCC online SC 955)*, this application is not
maintainable.

4. Taking the aid of the orders dated 16-01-2019, 15-12-2021



& 04-07-2022 passed by co-ordinate benches of this Court in Cr. Misc. Nos. 75288 of 2018, 1118 of 2021 & 38750 of 2021 respectively, it has been submitted by learned counsel for the petitioner that since the application under Section 438 of the Cr.P.C. has already been filed before issuance of processes under Sections-82 & 83 of the Cr.P.C., the present application is maintainable.

5. Having taken into consideration the view taken by the coordinate benches of this court, I differed with the same and passed an order dated 14-12-2022 in Cr. Misc. No. 31565 of 2022 dealing with the aforesaid orders. Relevant part of the order dated 14-12-2022 passed by this court in Cr. Misc. No. 31565 of 2022 is extracted hereinbelow:

“.....As already mentioned, it has been argued on behalf of the petitioner that anticipatory bail petition was filed before issuance of process under section 82 of the ‘Code’. In this respect, my humble view is that the decisions of the Hon’ble Supreme Court in the case of *Lavesh v. State (NCT of Delhi)* (*supra*) and in the case of *Prem Shankar Prasad vs. the State of Bihar and another* (*supra*) does not make any distinction whether anticipatory bail petition is filed before or after passing of order under section 82 of the ‘Code’. Merely because the petitioner has preferred anticipatory bail petition prior to order passed under section 82 of ‘the Code’, it



does not *ipso facto* make him entitle to the
privileges for anticipatory bail”.

6. Considering the aforementioned facts and
circumstances as well as the decisions as-referred-above, I am not
inclined to grant the privilege of anticipatory bail to the petitioner,
which is hereby, rejected.

7. If the petitioner surrenders and seeks regular bail before the
court below, his bail application shall be considered on its own
merit, without being prejudiced by this order.

(Nawneet Kumar Pandey, J)

Nirmal/-

U		T	
---	--	---	--

