

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.616 of 2024

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

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Archana Kumari Wife Of Kumar Saurav And D/O Rabindra Prasad @
Rabindra Kumar R/O Savitri Bhawan, Chhoti Badalpura, Near Railway
School Eastern Side, P.S.- Khagaul, District- Patna. At Present Residing At
Her Matrimonial House Of Mohalla- Gaus Ganj, P.S.- Ara Town, Dist.- Patna
... .. Petitioner

Versus

1. The State of Bihar
2. Shashi Devi Wife Of Asta Nand Singh R/O Village- Jamaluddin Chak, P.S.-
Khagaul, District- Patna

... .. Opposite Parties

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Appearance :

For the Petitioner :Ms/Mrs. Akanksha Verma, Advocate
For the State :Mr.Ajit Kumar, Addl Public Prosecutor

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 19-01-2024 Heard learned counsel for the parties.

2. This is second anticipatory bail petition. Earlier, the petition, filed for grant of anticipatory bail on behalf of petitioner, stood rejected, vide order dated 4.9.2023 passed in Cr. Misc. No. 32849/2023 considering the submission of counsel for the State and the complainant to the effect that the petitioner has been declared absconder and process of sections 82 & 83 Cr.P.C. have been initiated against him to ensure his appearance in the Court.

3. Learned counsel for the petitioner submits that merely because the process under section 82 or 83 of the Cr.P.C. has been issued, it cannot be said that the anticipatory bail petition is not maintainable. Besides this, counsel for the State and the complainant misrepresented the fact. He submits that the petitioner, much prior to issuance of the process of section 82 and 83 Cr.P.C, issued on 8.5.2023 and 17.8.2023 pursuant to



order of the trial court dated 1.5.2023 and 7.8.2023 respectively, had moved the court of session for seeking anticipatory bail on 30.8.2022. the Court below while hearing the matter, granted interim protection to the petitioner on 18.10.2022. However, case of the petitioner was dismissed on 18.3.2023 along with other co-accused. Thereafter, petitioner filed Cr. Mis. No. 32849/2023 seeking anticipatory bail on 11.5.2023. He submits that in the said case, petitioner had been granted interim protection vide order dated 21.8.2023.

4. While referring to the decision of the Hon'ble Apex Court held that in case of **Dataram V/s State of U.P.**, reported in **(2018) 3 SCC 22**, learned counsel for the petitioner submits that bail is a rule and exception to the Jail. He further refers to the decision of the constitution bench of the Apex Court passed in **Gurubksh Singh Sibia. In the said case, Hon'ble Apex Court has** highlighted eight propositions in case of anticipatory bail based on concept of the personal liberty of the person guaranteed under Article 21 of the constitution of India. It has been held that liberty of the person cannot be curtailed except the procedure established by law. Hon'ble Apex Court has clearly laid down that the anticipatory bail is maintainable even after filing chargesheet or till the person has not been arrested. In this regard, he places reliance on the other constitution bench decision of the Hon'ble Apex Court in case of **Sushila Agarwal V/s State (NCT Delhi & others)** reported in **(2020) 5 SCC. 1**. Learned counsel submits that from perusal of the scheme of section 438 of Cr.P.C. it emanates that a person shall be released on bail in the event of arrest and simultaneously scheme under section 82 and 83 Cr.P.C can be applied to create more pressure on the accused to surrender and for the attachment of the



property when an accused trying to flee from the Justice but here is not the case of the petitioner because of the fact that the petitioner approached the Court making request and prayer for anticipatory bail no sooner he know about issuance of summons. Hence, the petitioner cannot be said to the absconder. Learned counsel submits that the Court below without following the due procedure, issued process of 82 & 83 Cr..P.C. vide orders dated 1.5.2023 and 7.8.2023, in haste.

5. Learned counsel for the State points out several orders of the court below contained in annexure P/12 to the bail petition. Order dated 1.5.2023 reveals that the accused persons remained absent from the Court and Non Bailable Warrant (NBW) received with report that accused persons were absconding from home, thereafter, section 82 Cr. P. C. process was ordered to be issued. Again on 3.6.2023, 13.6.2023, 24.7.2023 & 7.8.2023 accused persons repeatedly remained absent and thus flouted the process of the Court. Learned counsel submits that in view conduct of the petitioner, privilege of anticipatory bail cannot be granted to the petitioner.

6. In this case, date of occurrence is 9.5.2019, order of cognizance is 4.7.2022 and sections 82 & 83 Cr.P.C. proceedings were issued on 8.5.2023 & 17.8.2023. Learned counsel for the petitioner has not disputed the fact that at the time of hearing of the earlier pre-arrest bail petition, sections 82 & 83 Cr.P.C. proceedings were already issued and petitioner had been declared absconder.

7. Recently, Hon'ble Apex Court in the case of ***G.R. Ananda Babu Vs. State of Tamil Nadu and Anrs*** reported in ***2021 SCC OnLine SC 176***, has held that successive applications ought not to be entertained, particularly when



the case diary and the status report clearly indicated that the accused is absconding and not co-operating with the investigation.

Paragraph 6 of the judgment is reproduced herein below:-

“As a matter of fact, successive anticipatory bail applications ought not to be entertained and more so, when the case diary and the status report, clearly indicated that the accused is absconding and not cooperating with the investigation. The specious reason of change in circumstances cannot be invoked for successive anticipatory bail applications, once it is rejected by a speaking order and that too by the same Judge.”

8. It is well settled that the provisions of law do not make any distinction whether anticipatory bail petition is filed before or after passing of order under section 82 of the Cr.P.C. Merely because the petitioner has preferred anticipatory bail petition prior to order passed under section 82 of the Cr.P.C., it does not *ipso facto* makes the accused person entitled to the privilege of anticipatory bail. In this regard, reference can be made to the decisions of the Hon’ble Supreme Court in case of **Lavesh v. State (NCT of Delhi)** reported in **(2012) 8 SCC 730** and **Prem Shankar Prasad vs. the State of Bihar** and another reported in **AIR 2021 SC 5125**.

9. The Hon’ble Supreme Court, in paragraph 7.3 of the judgment in case of **Prem Shankar Prasad (supra)**, has observed as follows:

“7.3 ...Recently, in Lavesh v. State (NCT of Delhi) [(2012) 8 SCC 730], this Court, (of which both of



us were parties) considered the scope of granting relief under Section 438 vis-à-vis to a person who was declared as an absconder or proclaimed offender in terms of Section 82 of the Code. In para 12, this Court held as under: (SCC p. 733)

“12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as “absconder”. Normally, when the accused is “absconding” and declared as a “proclaimed offender”, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail.”

It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail. Thus the High Court has committed an error in granting anticipatory bail to respondent No.2-accused ignoring the proceedings under Section 82-83 of Cr.P.C.”

10. In view of the pronouncement of law laid down by the Hon’ble Supreme Court in the above mentioned cases, the successive pre-arrest bail petition is dismissed.

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(Prabhat Kumar Singh, J)

