

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20856 of 2024

Arising Out of PS. Case No.-239 Year-2023 Thana- RASULPUR District- Saran

1. Dhiraj Kumar Giri@ Dhiraj Giri Son Of Dharamvir Giri R/o Village Chapraitha P.O.- Chainwa P.S.- Rasulpur District Chapra Bihar
2. Adarh Kumar Shashi Bhusan Giri@Adarsh Giri Son of Shashi Bhusan Giri R/o Bhosale Building Chaudhari Compound Bhiwandi Maharashtra-421305.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr.Sanjay Kumar Jha, Advocate
For the Opposite Party/s :	Mr.Dilip Kumar No. 1, APP
For Opp. Party No.2 :	Mr.Amit Srivastava, Sr.Advocate
:	Mr.Rakesh Kumar, Advocate
:	Mr.Girish Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

4 14-08-2024 Heard Mr.Sanjay Kumar Jha, learned counsel for the petitioners, Mr.Amit Srivastava, learned senior counsel for the informant and Mr.Dilip Kumar No. 1, learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in connection with Rasulpur P.S.Case No.239 of 2023, FIR dated 03.10.2023 registered for the offences punishable under Sections 302,120(b),34 of the Indian Penal Code and Section 27 of Arms Act.

3. As per allegation in the FIR, informant along with his two brothers and one co-villagers were going to Gopalganj by Car. As he reached near Chapraitha toll tax, six miscreants on



two motorcycles ambushed there and suddenly they attacked on their vehicle due to which informant lost the control over the vehicle and fell down into a pit. It is further alleged that miscreants took out his brother from car and assaulted him by means of lathi, danda, rod, dab and gunshot with intention to kill him and he died on spot.

4. Learned counsel for the petitioners submits that petitioners have falsely been implicated in the present case. The allegation as alleged in the FIR is false and fabricated and the petitioners have not committed any offence as alleged in the FIR.

5. Learned counsel for the informant and learned A.P.P. for the State, on the other hand, have vehemently opposed the prayer for anticipatory bail of the petitioners and submits that the petitioners have filed the present anticipatory bail petition in December, 2023 and process under Sections 82 and 83 Cr.P.C. has been issued in the month of January, 2024. Learned counsel for the informant has relied upon a judgment of the Hon'ble Apex Court in the case of **Srikant Upadhyay & Ors. Vs. State of Bihar**, reported in AIR 2024 Supreme Court 1600 and he has referred the paragraph Nos.21,24,25 and 26, which are being reproduced below:



“21. To understand and consider another contention of the appellants it is worthy to extract ground No.3 raised by the appellants in SLP which reads thus:

“III. Because the Hon’ble High Court has failed to appreciate that proclamation under section 82 Cr.P.C. was issued on 04.01.2023 by the Ld. Trial Court and thereafter process under section 83 Cr.P.C. have been initiated on 15.03.2023 whereas the application for anticipatory bail by the petitioner before the Hon’ble High Court was filed in November, 2022, however, the same was came for hearing on 04.04.2023. It is, therefore, evident that when the petitioners preferred filing of anticipatory bail before the Hon’ble High Court then none of the petitioner was declared absconder and process under section 82/83 Cr.P.C. were not initiated against them.”

“24. We have already held that the power to grant anticipatory bail is an extraordinary



power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit



cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant”.

“25.The factual narration made hereinbefore would reveal the consistent disobedience of the appellants to comply with the orders of the trial Court. They failed to appear before the Trial Court after the receipt of the summons, and then after the issuance ofailable warrants even when their co-accused, after the issuance ofailable warrants, applied and obtained regular bail. Though the appellants filed an application, which they themselves described as “bail-cum-surrender application” on 23.08.2022, they got it withdrawn on the



fear of being arrested. Even after the issuance of non-bailable warrants on 03.11.2022 they did not care to appear before the Trial Court and did not apply for regular bail after its recalling. It is a fact that even after coming to know about the proclamation under Section 82 Cr.PC., they did not take any steps to challenge the same or to enter appearance before the Trial Court to avert the consequences. Such conduct of the appellants in the light of the aforesaid circumstances, leaves us with no hesitation to hold that they are not entitled to seek the benefit of pre-arrest bail”.

“26.The upshot of the discussion is that there is no ground for interfering with the order of the High Court rejecting the application for anticipatory bail rather not considering application on merits. Since their action is nothing short of defying the lawful orders of the Court and attempting to delay the proceedings, this appeal must fail.



Consequently, it is dismissed”.

6. In view of the aforesaid findings of the Hon’ble Apex Court and also in view of the process under Sections 82 and 83 of Cr.P.C. has been issued against the petitioner, I find that this is not a fit case for grant of privilege of anticipatory bail to the petitioners in connection with Rasulpur P.S.Case No.239 of 2023 pending in the court of learned Judicial Magistrate, 1st Class, Chapra.

7. Prayer is refused.

(Rajesh Kumar Verma, J)

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