

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.6115 of 2024

Arising Out of PS. Case No.-153 Year-2022 Thana- CHIRAIYA District- East Champaran

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Sujeet Kumar @ Sujit Kumar S/O Harif Sahani R/O Village- Nayka
Tola Lalbegiya, P.S- Chiraiya, Distt.- East Champaran.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner	:	Mrs.Rashmi Jha, Advocate Mr.Abhishek Kumar, Advocate
For the State	:	Mr.Nitya Nand Tiwary, APP
For the Informant	:	Mr.Shankar Kumar Thakur, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

13 27-01-2025 Heard learned counsel for the petitioner and learned
APP for the State.

2. The accused-petitioner, named in the F.I.R., is apprehending his arrest in connection with Chiraiya P.S. Case No. 153 of 2022 registered for the offences punishable under Sections 302 and 120B of the Indian Penal Code and section 27 of the Arms Act. He has no criminal antecedent as stated in paragraph '3' of the application.

3. As per First Informant Report (in short 'F.I.R.'), this petitioner including other named co-accused namely, Devlal Sahani, Harif Sahani, Rambahadur Sahani and Jailal Sahani were found talking in early morning of 25.03.2022 with five



unknown persons who were on Apache motorcycle, where informant saw to pass some currency notes to one of the occupants of the motorcycle by co-accused Devlal Sahani, who was said to be in inimical terms with the informant, therefore, a suspicion was raised by the informant that petitioner along with other named and unknown co-accused persons, committed murder of his brother namely, Ram Vinay Prasad.

4. It is submitted by Mrs. Rashmi Jha, learned counsel appearing for the petitioner that on the basis of suspicion as it is apparent from face of F.I.R., petitioner was made 'named accused' in present crime in question, who is otherwise a man of clean antecedent. It is submitted that face of F.I.R. suggest that the informant was the eye witness of the occurrence, who did not make any allegation of overt act against this accused/petitioner, therefore, custodial requirement for the purpose of investigation is not appearing convincing in the present case and, therefore, the petitioner deserves anticipatory bail. Learned counsel submits that petitioner is ready to abide with any conditions as imposed by this Court.



5. It is further submitted that similarly situated co-accused namely, Harif Sahani was granted regular bail by learned trial court itself. It is also pointed out by learned counsel that co-accused namely, Gaurishankar Sahani @ Gauri Sahani and Byash Rai were granted anticipatory bail by this Court through Cr. Misc. No. 19962 of 2023 and Cr. Misc. No. 78039 of 2023 vide order dated 01.08.2023 and 08.12.2023 respectively. While concluding argument, it is submitted that charge-sheet against this petitioner has already submitted after investigation by showing him absconder, where nothing appears incriminating beyond suspicion as available through F.I.R.

6. Without opposing the factual aspects, as submitted above by learned counsel appearing for the petitioner, Mr. Shankar Kumar Thakur, learned counsel appearing for the first informant, submitted that this petition is not maintainable for the reason that process under section 82 of the Cr.P.C. was initiated against this petitioner vide order dated 28.11.2023 of learned trial court and, therefore, in view of the legal ratio as available through Hon'ble Supreme Court



legal report of **Srikant Upadhyay and Others Vs. State of Bihar and Anr.** reported in **2024 SCC Online SC 282**, this anticipatory bail application is not maintainable.

7. It is further submitted by learned counsel that one of the learned coordinate Bench of this Court, after discussing in length the law related with anticipatory bail after issuing process under Section 82 Cr.P.C., taking note of aforesaid report rejected the bail of petitioner while dealing with business of Cr.Misc. No. 12922/2022 dated 01.12.2022 in the matter of **Arjun Kumar Vs. State of Bihar**. Further, learned counsel submitted that anticipatory bail of one of the co-accused namely, Devlal Sahani was also rejected by one of the learned coordinate Bench of this Court through Cr. Misc. No. 63645 of 2022 vide order dated 20.06.2023.

8. It is further submitted by Mr. Thakur that judicial discipline demands that if this Court taking a different view *qua* **Arjun Kumar's** case (supra), then this matter must refer to the higher Bench. In support of his submission, learned counsel relied upon the legal report of Hon'ble Supreme Court as available through **State of Punjab and Anr. Vs. Devans**



Modern Breweries Ltd. and Anr. reported in **(2004) 11 SCC 26.**

9. Taking note of aforesaid submission as advanced by learned counsel for the informant, Mrs. Jha learned counsel appearing for the petitioner submitted that even in **Srikant Upadhyay's** case (supra), the Hon'ble Apex Court held in clear terms that "*issuing of process will not deprive the power of the court to grant pre-arrest bail in extreme exceptional cases in the interest of justice.*" It is also pointed out that anticipatory bail prayer of Devlal Sahani was rejected due to his criminal antecedents.

10. It is further submitted by learned counsel that in the matter of **Krishna Murari Yadav Vs. State of Bihar** reported in **2005 SCC Online Pat 712** this Court was pleased to quash the issuance of process under Section 82 and 83 Cr.P.C. as the same was filed without being supported by affidavit.

11. It is further submitted that aforesaid caveat as imposed by Hon'ble Supreme Court in **Srikant Upadhyay's** case (supra), safely suggest that there is no absolute bar to



consider the prayer of anticipatory bail and it can be decided from case to case basis. It is submitted that this legal position was further reiterated by Hon'ble Supreme Court in the matter of **Asha Debey Vs. The State of Madhya Pradesh [Criminal Appeal No. 4564 of 2024/SLP (Cri.) No. 13123/2024]**.

12. It is pointed out that if the caveat of Hon'ble Supreme Court *qua* exceptional circumstances and interest of justice be taken into consideration then certainly this case is fit to grant anticipatory bail even after issuance of process as save and except suspicion, nothing appears incriminating against this petitioner as to implicate him with present crime in question, where other similarly situated co-accused was granted regular bail by learned trial court itself.

13. It is further submitted that as far the order of this Court in **Arjun Kumar's** case (supra) is concerned, it transpires from said order that it makes an absolute bar for granting anticipatory bail after issuance of process under section 82 of Cr.P.C., which is contrary to the caveat as imposed by Hon'ble Apex Court through **Srikant**



Upadhyay's case (supra). It is submitted that the judgment/order of coordinate Bench, which appears in contrary to the judgment of the Hon'ble Supreme Court cannot be said to be followed.

14. It would be apposite to reproduce Sections **82** and **83** of the Cr.P.C. which reads as under:

"82. Proclamation for person absconding.—(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:—

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence



that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).

83. Attachment of property of person absconding.—

(1) The Court issuing a proclamation under section 82 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person:

Provided that where at the time of the issue of the proclamation the Court is satisfied, by affidavit or otherwise, that the person in relation to whom the proclamation is to be issued,—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local jurisdiction of the Court, it may order the attachment simultaneously with the issue of the proclamation.

(2) Such order shall authorise the attachment of any property belonging to such person within the district in which it is made; and it shall authorise the attachment of



any property belonging to such person without such district when endorsed by the District Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made—

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to the State Government, be made through the Collector of the district in which the land is situate, and in all other cases—

(a) by taking possession; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the payment of rent on delivery of property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached consists of live-stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908).”



15. It would be apposite to reproduce order dated 08.12.2023, which reads as under:

“**08.12.2023:** सभी तीन अभियुक्तगण अनुपस्थित हैं। दिनांक 8.1.24 वास्ते उपस्थिति। निर्गत NBW का तमिला आप्राप्त हैं। कार्यालय अभियुक्तों के विरुद्ध द. प्र. स. के प्रक्रिया निर्गत करें।”

16. It transpires from aforesaid order that process against this petitioner under Section 82 Cr.P.C. was ordered to be initiated against the petitioner by the learned trial court knowingly that NBW was not served upon. Record of proceeding suggest that legal process *qua* summon as available under Chapter VIA, and warrant as under Chapter VIB also not appears followed.

17. It would be apposite to reproduce para 25 from the judgment of Hon’ble Supreme Court as available through **Srikant Upadhyay’s** case (supra), which reads as under:

“**25.** 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.”

18. It would be further apposite to reproduce para 8 & 9 of the judgment of Hon’ble Supreme Court as available through **Asha Dubey’s** case (supra), which reads as under:

“8. Coming to the consideration of anticipatory bail, in the event of the declaration under section 82 of the Cr.P.C., it is not as if in all cases that there will be a total embargo on considering the application for the grant of anticipatory bail.

9. When the liberty of the appellant is pitted against, this Court will have to see the circumstances of the case, nature of the offence and the background based on which such a proclamation was issued. Suffice it to state that it is a fit case for grant of anticipatory bail, on the condition that the appellant shall cooperate with the further investigation. However, liberty is also given to the respondents to seek cancellation of bail that has been granted, in the event of a violation of the conditions which are to be imposed by the Trial Court or if there are any perceived threats against the witnesses.”



19. In view of aforesaid discussion as learned coordinate Bench of this Court imposed absolute bar for granting anticipatory bail after issuing process through **Arjun Kumar's** case, the same appears contrary to the Hon'ble Supreme Court judgment as available through **Srikant Upadhyay's** case (supra) and also of **Asha Dubey's** case (supra), as said order completely make impermissible to visit the exceptional circumstances of the case, in interest of justice, if occasion so arises as held by Hon'ble Apex Court.

20. A report was also called for from the learned trial court regarding status of the present case, wherein it has been informed by the learned trial court through its Letter No. 492 dated 15.06.2024 that the process under Section 82 & 83 of Cr.P.C. was issued against this petitioner including other co-accused persons during investigation on police prayer, whereafter on 30.06.2022, the police submitted charge-sheet against 11 accused persons including this petitioner showing him absconder. On 20.07.2022, learned A.C.J.M.-VI took cognizance against all 11 accused persons and thereafter issued NBW against this petitioner and committed this case to



the court of session on 06.08.2022.

21. It further appears from the aforesaid report that this case is pending in the court of learned 22nd Additional Sessions Judge, Motihari, East Champaran. Aforesaid report is silent regarding initiation of proceeding under Section 82 Cr.P.C. against petitioner by the learned trial court, as submitted above by learned counsel for the informant.

22. In view of discussion as made above, when the liberty of the petitioner is pitted against, this Court being constitutional court will have to see the circumstances of the case, nature of the offence and the background based on which such a proclamation was issued, precisely taking note of nature of allegation as available through F.I.R., which was not disputed by learned counsel appearing for the informant, where order of proclamation was directed to initiate knowingly that NBW was not served upon. In entire case diary save and except suspicion, nothing available incriminating against this petitioner.

23. Accordingly, this Court is of the opinion that mere on the basis of order for initiating process under Section 82 of



the Cr.P.C., such a valuable right related with the liberty *qua* petitioner cannot be curtailed as fact of this case *prima-facie* convincing to treat this case as of exceptional category because save and except suspicion nothing survives against this petitioner, hence, by taking a guiding note of **Srikant Upadhyay's** case (supra) and **Asha Dubey's** case (supra), petitioner above-named, in the event of his arrest/surrender within a period of four weeks from today, is directed to be enlarged on bail on furnishing of bail bond of Rs.10,000/- (ten thousand only) with two sureties of the like amount each to the satisfaction of learned 4th Additional Chief Judicial Magistrate, Motihari, East Champaran/concerned court in connection with Chiraiya P.S. Case No. 153 of 2022, subject to the conditions as laid down under Section 438(2) of the Cr.P.C/Section 482(2) of the Bhartiya Nagarik Suraksha Sanhita (in short "B.N.S.S.") and further condition that:

(i) Accused/Petitioner shall cooperate in trial and shall be physically present on each and every date and exemption from physical appearance be allowed by court only on medical ground of the



petitioner duly supported by the documents.

(II) In case of any attempt on behalf of petitioner for delaying trial, State may be at liberty to press for his bail bond cancellation before learned trial court itself.

(Chandra Shekhar Jha, J.)

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