

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.6089 of 2025

Arising Out of PS. Case No.-94 Year-2024 Thana- KHAJEKALA District- Patna

Abhishek Kumar S/O Sri Moti Lal Verma Resident Of Village- Sugaon P.S.-
Tehta, Dist- Jehanabad (Bihar)At Present Address- Badaoda Pali, P.S.- Baroda
City Junction, Dist- Baroda (Gujrat)

... .. Petitioner/s

Versus

1. The State of Bihar
2. Jyoti Kumari D/o Krishna Prasad R/o Sadar Gali, Patna City, P.S.-
Khajekalan, Distt.- Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sanchay Srivastava, Adv
	:	Mr. Sushant Srivastava, Adv
	:	Mr. Ashish Kumar Palit, Adv
For the Opposite Party/s	:	Mr. Anant Kumar 1, APP
For the O.P. No. 2	:	Mr. Raju Giri, Sr. Adv
	:	Mr. Harsh Vardhan, Adv
	:	Mr. Shamsher Prasad, Adv

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
C.A.V. JUDGMENT

Date : 18-06-2025

Heard learned counsel for the petitioner and
learned counsel for the respondents.

2. The present quashing petition has been
preferred to quash the order dated 07.06.2024 passed in
G.R. No. 1427 of 2024 arising out of Khajekalan P.S. Case
No. 94 of 2024, where learned Judicial Magistrate 1st Class,
Patna City, has passed an order for the initiation of
proceedings under Section 82 of the Cr.P.C., which has been



issued on 18.06.2024 against the petitioner/accused.

3. The allegation against the petitioner as per FIR is to commit rape upon O.P. No. 2 on the false pretext of marriage, subsequent to his acquaintance with O.P. No. 2 at a wedding function in Gujarat. It is alleged that all instances of the purported physical relationship took place at Patna during the petitioner's visits.

4. The main question which requires adjudication in the present quashing petition is whether the issuance of proceedings by learned Trial Court under Section 82 of the Cr.P.C. against the petitioner was justified or not.

5. Learned counsel appearing on behalf of the petitioner submitted that before the issuance of proceedings under Section 82 of Cr.P.C. compliance with mandatory provisions as available under Sections 61-69 of Cr.P.C. (Chapter VI-A) and Sections 71-75 of Cr.P.C. (Chapter VI-B) not appear to be followed in the present case. It is submitted that the proceeding of this case was not in the knowledge of the petitioner, and, therefore, the issuance of process under Section 82 is appearing bad in the eyes of the law. While



concluding his argument learned counsel relied upon the legal reports of this Hon'ble Court as available through **Krishna Murari Yadav Vs. The State of Bihar** reported through **2005 SCC OnLine Pat 712 & Pinki Kumari and Another Vs. The State of Bihar and Others** reported through **Cr.W.J.C. No. 712 of 2022 dated 26.08.2022.**

6. At this stage, it would be appropriate to reproduce Section 82 of the Cr.P.C. for the better understanding of the case:-

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).]

7. Learned senior counsel appearing on behalf of O.P. No. 2, while opposing the aforesaid prayer, submitted that the petitioner was working with Indian Railways and was posted at Vadodara in the state of Gujarat. It is submitted that the aforesaid act was within the knowledge of the learned Trial Court, and accordingly a non-bailable warrant was issued against the petitioner, through the Superintendent of Police, City East, Patna vide Letter No. 1766 dated 03.05.2024 addressed to the DRM, Ahmedabad Division, Gujarat. The aforesaid letter was received by DRM Office on 11.05.2024. It is submitted that thereafter, under Section 70 of the Cr.P.C. 1973, notice of non-bailable warrant was issued against this petitioner. It is further submitted that Khajekalan Police Station by letter dated 10.05.2024, requested the GRP Police Station in Viramgam Gujarat to help Bihar Police to arrest the petitioner. It is further submitted that vide letter dated 11.05.2024, the police made a request to the Senior Section Engineer (Signal), Viramgam, Western Railway, pursuant to which it was informed that the petitioner was on



sanctioned leave from 10.05.2024 to 14.05.2024.

8. It is further submitted that, with an intent to frustrate the execution of the NBW, the petitioner proceeded on leave on medical ground after rejoining duty on 10.05.2024, despite being aware of the issuance of the said warrant. It is also submitted that to make a prayer of anticipatory bail petition maintainable, proceedings under Section 82 of Cr.P.C. were challenged in view of **Srikant Upadhyay and Others Vs. State of Bihar and Another, 2024 SCC OnLine SC 282.**

9. It would be apposite to reproduce the para no(s). 18 & 19 of the **Krishna Murari Yadav Case (supra)**, which reads as under:-

18. Another order which has been challenged by the petitioner is the order dated 4.8.2005 passed by the C.J.M., Patna on a petition filed by the Investigating Officer on 3.8.2005. In this petition composite prayer has been made by the Investigating Officer for issuance of the order of proclamation under Section 82 Cr. P.C. as well as the order of attachment under Section 83 Cr. P.C. This unaffidavited petition has been brought on the record of the case as Annexure-3. In this petition it has been stated



that the accused persons are absconding and there is an apprehension that after disposing of their movable and immovable property, they may abscond. The C.J.M., has passed order under Section 82 Cr. P.C. for proclamation, in the margin of the petition itself. Counsel for the petitioner has brought on record the complete order-sheet of the case as Annexure-4. The proclamation order under Section 82 Cr. P.C. has been passed by-the Chief Judicial Magistrate do not indicate that the court had any reason to believe that the person against whom such prayer has been made are either absconding or concealing themselves even after issuance of warrant of arrest. Section 82(1) Cr. P.C. reads as follows:—

“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.”

19. The expression “Reason to believe” occurring in this section suggests that the Magistrate must be substantively satisfied that the person has absconded or has concealed themselves on the materials before him. Under Section 82 Cr. P.C. the Magistrate issuing



proclamation must record his satisfaction that the accused has absconded or concealed himself, the Magistrate can grant permission for proclamation only on being fully satisfied and it should never been allowed in a routine manner. The order which has been passed by the Magistrate neither shows his satisfaction nor indicates that he had any reason to believe for passing such order. The order passed by the Magistrate is illegal also because on an unaffidavited petition filed by the I.O. such order has been passed.

Conclusion:

10. I have perused the materials available on record and considered the arguments canvassed by learned counsel appearing on behalf of the parties.

11. In view of the foregoing factual and legal submissions, it is submitted that the proceedings were well within the knowledge of the petitioner, and he was duly informed at all official levels regarding the pendency of the present matter. However, he intentionally and deliberately failed to make himself available for arrest, thereby willfully evading the due process of law. In view of the above the initiation of proceedings under Section 82 of the Cr.P.C., not



appear bad in the eyes of the law.

12. Accordingly, this Court does not find any illegality in the order dated 07.06.2024 as passed by learned Judicial Magistrate, 1st Class, Patna City, in connection with G.R. No. 1427 of 2024 arising out of Khajekalan P.S. Case No. 94 of 2024 and, therefore, the same does not require interference by this Court.

13. Hence, the present quashing petition stands dismissed as being devoid of any merit.

14. Office is directed to sent a copy of this judgment to the learned Trial Court, forthwith.

15. Pending petitions, if any, disposed of accordingly.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	NAFR
CAV DATE	16.05.2025
Uploading Date	18.06.2025
Transmission Date	18.06.2025

