

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14038 of 2025

Arising Out of PS. Case No.-247 Year-2022 Thana- PARSA District- Saran

1. Kajal Devi W/O Chaudhary Rai Resident Of Village- Mathiya, P.S- Parsa, Distt.- Saran at Chapra.
2. Sarita Kumari D/O Chaudhary Rai Resident Of Village- Mathiya, P.S- Parsa, Distt.- Saran at Chapra.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Md Ejaz Akhtar

For the Opposite Party/s : Mr.Choubey Jawahar

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

CAV ORDER

4 11-07-2025

I have already heard the parties.

2. The prayer for anticipatory bail of the petitioners was earlier rejected by this Court, vide order dated 12.07.2023 passed in Cr. Misc. No. 26461 of 2023 wherein it was observed that the petitioners are not entitled for anticipatory bail since the process under Sections 82 and 83 of the CrPC was issued against them. The relevant portion of the order dated 12.07.2023 is extracted hereinbelow:-

“At the very outset, the learned APP has submitted that the process under Sections 82 and 83 of the Cr.P.C. has been initiated, as such, the petitioner is not entitled for anticipatory bail.

In view of aforesaid submission, this application is dismissed as not maintainable, in the light of the recent decision in the case of Prem Shankar Prasad vs. State of Bihar and Another (2021 SCC online SC 955).

If they surrender before the court below then prayer for bail shall be considered without being prejudiced by this order.”



3. Again the petitioners preferred this petition for anticipatory bail for the second time after near about two years. Petitioner no. 1 is the mother-in-law and petitioner no.2 is the sister-in-law of the deceased. They are accused for commission of an offence punishable under Section 304B of the IPC.

4. The learned counsel for the petitioners has submitted that in the case of *Asha Dubey Vs. State of Madhya Pradesh (Cr. Appeal No. 4564 of 2024/ SLP (CRL). No. 13123 of 2024*, the Hon'ble Supreme Court held that the issuance of process under Section 82 of the CrPc is not a complete embargo to consider the application for grant of anticipatory bail. Paras- 4 & 8 of the order of Hon'ble Supreme Court are being quoted hereinbelow:-

“4. Insofar as the proceedings initiated under Section 82 of the then code of Criminal Procedure, 1973 (for short, ‘Cr.P.C’) against the appellant are concerned, it is submitted that it is not as if there is a complete embargo to consider the application for grant of anticipatory bail.

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.”

5. The learned counsel for the petitioners has



submitted further that the process under Sections 82 & 83 of the CrPC was issued subsequent to filing of the petition for anticipatory bail. In support of his submission, he relied upon the order dated 04.07.2022 of Co-ordinate Bench of this Court passed in Cr. Misc. No. 38750 of 2021 (Santosh Yadav @ Santosh Kumar Yadav Vs. State of Bihar). The order of Santosh Yadav (*supra*) was considered in subsequent decision of this court in the case of Arun Kumar Vs. State of Bihar in Cr. Misc. No. 12922 of 2022. The relevant portions of that decision is being extracted hereinbelow:-

“ Now it has to be seen whether a person who is declared absconder is entitled for anticipatory bail or not? If a person is declared absconder under section 82 of ‘the Code’, it means that the court which declared him as absconder has reason to believe that he has absconded or is concealing himself. There are two ingredients or pre-requisites of declaring an accused as an absconder. First ingredient is that a warrant should have been issued against that person and second, the Court must be of the opinion that the accused has absconded or is concealing himself.

The order under section 82 of ‘the Code’ is a judicial order pronounced by a court of competent jurisdiction. When the order is passed under section 82 of ‘the Code’ by a court of competent jurisdiction, it means that the court was of the opinion that the accused was concealing himself or



absconding. Until or unless this order is set aside by the superior court, there is presumption that the person against whom the process under section 82 of 'the Code' has been issued, is concealing himself or absconding. Though the order is transitory in nature and subservient to provisions under sections 83, 84, 85 and 86 of 'the Code' even then its judicial sanctity is indefeasible unless it is judicially reviewed by the superior authorities in hierarchy.

Section 438 of 'the Code' provides a statutory right to a person who has reason to believe that he may be arrested on accusation of having committed a non-bailable offence to file petition for his pre-arrest bail, before the High Court or the Court of Session. A person, who is fleeing away from justice and has been declared as absconder by a judicial order promulgated by a competent court, how can he say that there is apprehension of his arrest, without making himself available to the process of justice. In my view, he is certainly not entitled for anticipatory bail. He is under obligation to make himself available to the authority where his appearance is required and bypassing that authority if he comes before the superior court with a prayer of anticipatory bail, he is not entitled for that. In my view, he should submit himself to the court/authority where his presence is required. The petitioner instead of making himself available before the learned court below or before the investigating authorities, wants a protective blanket of anticipatory bail over his head, which cannot and should not be given.

Now it is pertinent to mention here



some repercussions which arise due to absconding of an accused which affects the administration of criminal justice system. Normally it is seen that if more than one persons are accused in a case and during investigation one or more than one accused persons are absconding, the investigating officer generally submits report under Section 173 of 'the Code' against the appearing accused persons, splitting the case of absconding accused persons. The appearing accused persons are put on trial and the trial comes to the logical conclusion. Thereafter when the absconding accused is apprehended again police report is submitted and again he faces trial. As such, the consequence of absconding of the accused results into multiplicity of cases, which burdens the docket of the court which is already under pressure of docket explosion. The situation becomes more severe, predicamentary and paradoxical when the dichotomy arises before a court when in the first trial the witnesses support the prosecution case and in subsequent trial arisen out of the same case the same witnesses would turn hostile. Similar situation arose before the Hon'ble Jharkhand High Court in case of Gagan Thakur vs. State of Jharkhand and others, reported in 2004 (2) Cr.L.J. page 1910, the relevant portion of paragraph 7 of that case is being extracted hereinbelow:-

“The splitting up of cases leave scope for many splittings, depending upon the number and will of absconders. This is, thus, a misuse of process of Court manipulated by absconders and can tend to failure of justice or its miscarriage. To



illustrate, I found that in Cr Appeal No. 1431/03, the main case was split up. The informant appeared at trial and said that he identified two dacoits and took their names (one of the two was absconder and the one was facing trial) and when the case of absconding accused was committed and he was put on trial, the same witness said he had identified none. Such are likely to be the ill-effect of splitting up.”

In Special Leave Petition (Criminal) No. 7358 of 2021, Sanatan Pandey Versus State of Uttar Pradesh and another, in a recent decision where an accused against whom the process under section 82 of ‘the Code’ was issued, approached for anticipatory bail, the Hon’ble Supreme Court observed as follows:-

“The Court shall not come to the rescue or help the accused who is not cooperating the investigating agency and absconding and against whom not only non-bailable warrant has been issued but also the proclamation under Section 82 Cr. P.C. has been issued.”

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 above-mentioned decisions of Hon’ble Supreme Court in the case of Laves 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 entitled to the privileges for anticipatory bail.

On the above-mentioned observations, the petitioner is not entitled for privileges of anticipatory bail. Accordingly, it is rejected."

6. So far as the case of **Asha Dubey (Supra)** is concerned, the process under Section 82 only was issued in that case, whereas in the present case, the process under Section 83 of the CrPC has also been issued against the petitioners.

7. The anticipatory bail petition of the petitioners was earlier rejected in the year 2023, but after two years, instead of surrendering before the court below, they again preferred an anticipatory bail petition. Due to act of the petitioners, the trial has hampered for a long duration. As such, they are not entitled for anticipatory bail.

8. Accordingly, the application stands ***rejected***.

(Nawneet Kumar Pandey, J)

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