

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.27235 of 2025

Arising Out of PS. Case No.-133 Year-2024 Thana- MAHILA P.S. District- Siwan

Abhiram Kumar S/O Mr. Mithilesh Kumar R/O Village- Ramnagar, P.S-
Fulparas, Distt.- Madhubani.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Adv. Ms. Vaishnavi Singh, Adv.
For the Informant		Mr. Ansul, Sr. Adv. Mrs. Shuchi Bharti, Adv.
For the State	:	Mr. Ram Priya Sharan Singh, APP

CORAM: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL ORDER

7 15-07-2025 Heard Mr. Ajay Kumar Thakur, learned counsel for
the petitioner, learned Additional Public Prosecutor for the State
and Mr. Ansul, learned senior counsel for the informant.

2. The petitioner is apprehending his arrest in a case
registered for the offence punishable under Sections 376, 420,
120(B), 504, 506/34 of the Indian Penal Code and Section 4 of
the Dowry Prohibition Act.

3. The prosecution case, as unfolded in the first
information report, indicates that a 36 years old informant
(lady), Panchayat Raj Officer, posted at Siwan, lodged the
present case against the 32 years old petitioner, who was
unemployed then, that they were thrown together during
coaching classes three years back and the acquaintance



developed into an intimacy, followed by a proposal of marriage by the petitioner. Subsequently, they entered into physical relationship and the informant has alleged that she was sexually exploited on the pretext of marriage, which was subsequently denied by the petitioner.

4. Before going into the merits of the case, the preliminary objection to the grant of anticipatory bail raised by Mr. Ansul, learned senior counsel appearing on behalf of informant, requires to be first addressed.

5. It has been submitted by way of an affidavit filed on behalf of the informant that the learned Court of S.D.J.M., Siwan was pleased to issue processes under Sections 82 and 83 Cr.P.C. against the petitioner and in this regard order dated 01.07.2025 has been brought on record to show that the police moved the requisition for issuance of process under Section 83 Cr.P.C. and the learned Court concerned passed order on the same day.

6. Learned senior counsel, on such development, has placed strong reliance on the case of **Srikant Upadhyay Vs. State of Bihar & Anr.** being **Special Leave Petition (Crl.) No. 7940 of 2023**, wherein it was held that once the steps for proclamation under Section 82 Cr.P.C. and further proceedings



under Section 83 Cr.P.C. have also been initiated, the applicant is not entitled to invoke extraordinary power of the Court. Relying on the above mentioned decision of the Hon'ble Supreme Court, it has been strongly contended that the present anticipatory bail of the petitioner is fit to be rejected since coercive processes have already been issued/ordered to be issued against him.

7. In response, Mr. Ajay Kumar Thakur, learned counsel appearing for the petitioner, has argued that the petitioner, a government servant presently on the post of Assistant Collector, has throughout been present before the Courts seeking his legal remedies and the police, for extraneous reasons, in collusion with the informant, has managed to get the process under Section 82 Cr.P.C. issued against the petitioner and has also got an order of the Court on its requisition for issuance of process under Section 83 Cr.P.C. However, the process under the aforementioned provision has neither been issued nor executed till date. It has also been submitted that, in the meantime, the petitioner has also preferred a criminal revision application, bearing Cr. Rev. No.140 of 2025, before the learned Court of Principal District and Sessions Judge, Siwan challenging the order dated 01.07.2025, whereby the



requisition by the police for issuance of process under Section 83 Cr.P.C. was allowed and the same is pending adjudication.

8. It would appear from the records of the case that the first information report was lodged on 15.12.2024 and the anticipatory bail petition on behalf of the petitioner was filed before the learned Session Court in the month of December, 2024 itself and the prayer was rejected on 29.03.2025. Thereafter, an application under Section 438 Cr.P.C./482 BNSS was filed before this Court on 09.04.2025 and the same remained pending on the cause list as it could not be taken up for consideration for no fault of the petitioner. However, the same was heard, upon the matter being mentioned to be taken up on priority basis. This would show that the petitioner, without losing any time, filed his application before the learned Court below and upon rejection of the same, before this Court, without causing any delay and it is due to the pendency of the cases, that his case could not be taken up for hearing at an earlier date. It is to be noticed that while the case was being mentioned before this Court for an early hearing, the Investigating Agency had become overactive and filed a requisition for issuance of process under Section 83 of the Cr.P.C. and when the matter was heard on 02.07.2025, it was



informed on behalf of the informant that just a day prior to the date of hearing, i.e. on 01.07.2025 the said requisition was pressed by the Investigating Agency and the court ordered for issuance of process under Section 83 of the Cr.P.C. Upon looking at the turn of events and noticing the over-enthusiasm and overzealous attitude of the Investigating Agency to somehow get all coercive processes issued against a Government servant whose matter was on the verge of being heard, in order to frustrate the recourse available to the petitioner under Section 438 Cr.P.C./ 482 BNSS and thus curtail his right to liberty as enshrined under Article 21 of the Constitution of India, this Court deemed it proper to call for the physical appearance of the Investigating Officer along with the case diary.

9. Today, the Investigating Officer is present with the case diary and upon looking into the same, a specific query was made by the Court with regard to the reason for such haste shown in taking coercive processes against the petitioner, the Investigating Officer, besides taking the plea of some lapse of time also admitted that she was under some pressure.

10. From a cursory perusal of the case diary, this Court has found that the Investigating Agency was adamant to



anyhow nab the petitioner and put him behind bars and even while he was deputed on Prime Minister duty at Madhubani as was informed by the District Magistrate, Samastipur, where he was posted, the police even reached his house at Darbhanga in order to arrest him. The incessant efforts being made by the police with extreme haste and promptitude would be appreciated in case of a person having criminal background, whose conduct would have shown that there was likelihood to abscond and evade the process of law. But, considering the case of the petitioner, who is a responsible government officer serving on the post of Assistant Collector, having no criminal background, and who is throughout before the Courts of law seeking his legal remedies, such adamant approach and action raises reasonable suspicion and does not seem to be justified. It has also been noticed by the Court that while the application for anticipatory bail was pending before the Session Court, an interim protection by way of no coercive steps to be taken against the petitioner was granted on 04.02.2025 and by different orders was extended till 29.03.2025, when the application was finally rejected. Immediately thereafter, the police once again swung into action and while the anticipatory bail application of the petitioner was pending before this Court, all efforts in the form of coercive



measures started being resorted to.

11. In such backdrop, it has to be analyzed whether, by virtue of coercive processes, seeming to be malafidely issued against him, the petitioner ought to be denuded of his basic right to liberty as provided under Section 438 Cr.P.C./482 BNSS read with Article 21 of the Constitution of India.

12. Learned counsel for the petitioner at this stage relies upon the case of **Gurbaksh Singh Sibbia etc Vs. The State of Punjab**, reported in **AIR 1980 SC 1632**, whereby the Constitution Bench of the Hon'ble Supreme Court held that an anticipatory bail can be granted so long the applicant has not been arrested. The significance of personal liberty and the judicial discretion of the Courts has been dealt in the said judgment, especially in paragraph-15 and 26 which are being quoted hereunder:

“15. Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions. And it will be strange if, by employing judicial artifices and techniques, we cut down the discretion so wisely conferred upon the Courts, by devising a formula which will confine the power to grant anticipatory bail within a strait-jacket. While laying down cast iron rules in a matter like granting anticipatory bail, as the High Court has done, it is apt to be overlooked that even judges can have but an imperfect awareness of the needs of new situations. Life is never static and every situation has to be assessed in the context of



emerging concerns as and when it arises. Therefore, even if we were to frame a 'code for the grant of anticipatory bail'. Which really is the business of the legislature, it can at best furnish broad guidelines and cannot compel blind adherence. In which case to grant bail and in which to refuse it is, in the very nature of things, a matter of discretion. But apart from the fact that the question is inherently of a kind which calls for the use of discretion from case to case, the legislature has, in terms express, relegated the decision of that question to the discretion of the court, by providing that it may grant bail "if it thinks fit". The concern of the courts generally is to preserve their discretion without meaning to abuse it. It will be strange if we exhibit concern to stultify the discretion conferred upon the Courts by law."

26. We find a great deal of substance in Mr. Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the Court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that Section. S. 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. No doubt can linger after the decision in *Maneka Gandhi*, (1978) 1 SCC 248: (AIR 1978 SC 597) that in order to meet the challenge of Art. 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. S. 438, in the form in which it is



conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein.”

13. The above-mentioned Constitution Bench judgment still holds the field. This judgment, no doubt, also refers to striking a balance between individual's right to personal freedom and the investigational rights of the police and in the instant case, that balance is being disrupted by the police action of channelizing all energy towards curtailing the freedom of the applicant/petitioner rather than concentrating on the investigational aspects as the investigating agency never seems to have approached the petitioner for any investigational purpose while he was on an interim protection from arrest. It is difficult to comprehend as to what deterred the Investigating Agency from continuing with the process of investigation as the interim order was only confined to not taking any coercive steps against the petitioner.

14. The very scheme and question of issuance of coercive processes especially the non-bailable warrants have been the subject matter of analysis and discussion in the case of **Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors.** reported in **2007 (12) SCC 1** rendered by a three Judges



Bench of the Hon'ble Supreme Court. It has been laid down in clear terms in para-51 of the said judgment.

“51. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.”

15. However, the court's duty of maintaining proper balance between individual liberty and the societal interest before issuance of warrants, has also been emphasized. The likelihood of a person to abscond and also that such person could harm some one if not placed into custody immediately, has also been discussed to be reasons necessitating the issuance of non-bailable warrant. In connection to the present case, where the petitioner is a responsible government servant, with no criminal background, he is neither likely to abscond or tamper with evidence nor can he be said to be any kind of threat to the society. Hence, the learned counsel submits that the very issuance of non-bailable warrant in the case at hand was not just and proper.

16. In order to further bolster his submission, learned counsel further places reliance on the case of **Asha Dubey Vs. State of M.P. (Cr. Appeal No. 4564 of 2024/SLP Cri. No. 13123 of 2024)** to contend that in the event of



declaration under Section 82 Cr.P.C., there will not be a total embargo on considering application for grant of anticipatory bail in all cases. Para-8 and 9 of the said judgment are quoted hereunder for ready reference.

“8. Coming to the consideration of anticipatory bail, in the event of 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 is 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 violation of the conditions which are to be imposed by the trial court or if there are any perceived threats against the witnesses.”

17. Thus, it appears that the basic idea is to seek cooperation from the petitioner in the process of investigation and in case of violation of any of the conditions imposed by the trial court, the liberty to seek cancellation of bail can always be granted.

18. Per contra, the learned senior counsel appearing on behalf of the informant has submitted that the present application for anticipatory bail is fit to be rejected in view of the law laid down in the case of **Srikant Upadhyay & Ors. Vs.**



State of Bihar & Anr. vide Cr. Appeal No..../2024 (@ Special Leave Petition (Crl.) No. 7940 of 2023) and also in view of the serious allegation of sexual exploitation on pretext of marriage. The Supreme Court in the case of **Srikant Upadhyay (supra)** did not interfere with the orders of the High Court which had dismissed the application for anticipatory bail filed by the applicants taking note of the proceedings under Section 82/83 of the Cr.P.C. and observing that owing to such developments, the application for pre-arrest bail could not be maintained. In the concluding para-26 of the said judgment, it has been clarified that there is no ground for interfering with the order of the High Court as the action of the applicants was nothing short of defying the lawful orders of the court and attempting to delay the proceedings. So far as the present case is concerned, it needs to be considered that the non-bailable warrants were issued during the pendency of the anticipatory bail petition before the High Court as distinguished from the fact situation in **Srikant Upadhyay and Ors. (supra)**, wherein it was noted that non-bailable warrants were pending against the applicants when they moved the said application for anticipatory bail before the High Court, as would appear from para-14 of the said judgment. Further, the conduct of the applicants therein of moving a bail-



cum-surrender application and then withdrawing it and then again applying for anticipatory bail was considered to be delaying tactics and hence, they were continuously said to be defying orders of the court and kept absconding and hence, they were not held to be entitled to grant of anticipatory bail.

19. However, in para-24 of the said judgment, it has been stated that the question of grant of anticipatory bail should be left to the cautious and judicious discretion of the court depending upon the facts and circumstances of each case while emphasizing the need to safeguard the freedom of an individual against unwarranted arrest. It has been expressed that the issuance of warrant of arrest or proclamation, will not deprive the power of the court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice.

20. Thus, even in view of the judgment in the case of **Srikant Upadhyay (supra)**, all doors are not closed for the petitioner and in the interest of justice, orders can be passed, especially taking into consideration that the provision of Section 438 Cr.P.C. has not been invoked after the issuance of warrant or proclamation. The interest of justice would weigh in favour of the present petitioner if the facts of the case are considered, coupled with the fact that the petitioner, being a responsible



government servant is not likely to abscond or evade the process of law.

21. This lead us to the consideration of the facts of the case, upon which the counsels for both the parties have placed their submissions. It would be apparent from a perusal of the FIR that the informant aged about 36 years, was a matured and educated lady, who also got a government job after acquaintance with the petitioner. It is also clear that there were exchange of phone calls and messages between them and the petitioner had even proposed her for marriage and the family members of the petitioner also came on familiar terms and upon their proposal, she subsequently became agreeable for the marriage and started meeting the petitioner at various places on several occasions and physical intimacy developed between them. However, later on, a baseless plea was taken that the physical relationship was established on the pretext of marriage which subsequently could not materialize due to certain demands made by the family of the petitioner, as stated by the informant herself. In such background of the allegations, it prima facie appears to be a consensual relationship between two adults which could not culminate into a marriage. There is no allegation of any kind of force, threat or coercion exercised by



the petitioner and entering into a physical relationship was an informed and conscious choice of the informant.

22. There are a catena of judgments on the issue of consensual relation between adults not involving the ingredients of Section 375 Indian Penal Code and also that a false promise to marry is distinctly different from a breach of promise to marry and in this regard a reference may be made to the recent cases of **Pramod Suryabhan Pawar vs State of Maharashtra reported in 2019 (9)SCC 608, Sonu @ Subhash vs State of Uttar Pradesh reported in 2021 (3) BLJ 171 SC, Ajeet Singh Vs. State of Uttar Pradesh & Ors. reported in 2024 (2) SCC 422.**

23. The case of **Biswajyoti Chatterjee Vs. State of West Bengal & Anr., Cr. Appeal No.....of 2025; arising out of SLP (CrL.) No. 4261 of 2024**, is the latest judgment on the aforesaid issue delivered on April 7th 2025. The Apex Court, relying upon some other earlier judicial pronouncements, and on the facts of the case has deprecated the tendency of initiating criminal proceedings when bitterness between parties in long-standing relations starts creeping in. It has been concluded in paragraph 20 of the said judgment which is quoted as hereunder:

“ 20. We find that there is a growing tendency



of resorting to initiation of criminal proceedings when relationship turn sour. Every consensual relationship, where a possibility of marriage may exist, cannot be given a colour of a false pretext of marry, in the event of a fall out. It is such *lis* that amounts to an abuse of process of law, and it is under such circumstances, that we deem fit to terminate the proceedings at the stage of charge itself.”

24. The case of **Prasant Bharti vs state of NCT of Delhi**, reported in 2024 SCC online SC 3375 finds a reference in the case of **Biswajyoti Chatterjee(Supra)** wherein it has been held to be inconceivable, that the complainant would continue to meet the appellant or maintain a prolonged association or physical relationship with him in the absence of voluntary consent on her part.

25. Thus, taking into consideration the totality of circumstances, it can also be concluded in the present case of a long-standing relationship between the petitioner and the informant, as in the case of **Prasant Bharti (supra)**, that a mere breakup of such a relationship between a consenting couple cannot and should not be criminalized when the said relationship does not fructify into marriage and such a worrying trend off late is on a rise.

26. Considering the background of the case, the absence of likelihood of the petitioner, having no criminal



background, to abscond or flee away from the course of justice, especially being a government servant, no possibility of him being or posing any kind of threat to the society and upon undertaking by him to cooperate in the investigation and trial, it would be expedient in the interest of Justice that the privilege of anticipatory bail be granted to him.

27. The present case is one in which the technicalities of law have to take a back seat when pitted against substantial justice. The issuance of coercive processes against the petitioner, in the manner they have been done, and in the special facts and circumstances, as has been enumerated in detail in the preceding paragraphs relating to motivated police action and mechanical approach of the court concerned, there would be no justification in depriving the petitioner of his valuable right to personal liberty.

28. However, it is made clear, that the present case would not act as a precedent for such applicants against whom coercive processes are essential to prevent them from absconding or tampering with evidence or those who, by virtue of their criminal background, pose a threat to the society and thus become societal concern. The privilege ought not to also be extended to persons who deliberately defy orders of the courts



in their attempt to delay proceedings.

29. Considering the case of petitioner on merits as well as taking into consideration that there is no deliberate attempt by him to evade any process of law as he approached the courts even before issuance of non-bailable warrants and was even given interim protection, which he never misused to his advantage and further not being on any flight risk, let the above named petitioner, be released on bail, in the event of his arrest or surrender before the learned Court below within a period of four weeks from today, on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Court below where the case is pending/ successor Court in connection with Siwan Mahila P.S. Case No. 133 of 2024, subject to the condition as laid down under Section 438 (2) of the Cr.P.C./482 of the BNSS. and further conditions:

(i) The petitioner would cooperate in the investigation and would make himself available before the Investigating Agency as and when required till the investigation is concluded against him.

(ii) The petitioner would not abscond or tamper with evidence.



(iii) The petitioner would cooperate in the trial and no delay would be caused at his end. In case the petitioner is found to be deliberately delaying the proceedings, without substantial reasons, the informant shall have the liberty to approach the court concerned for cancellation of bail bonds.

30. The presence of the Investigating Officer is dispensed with.

(Soni Shrivastava, J)

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