

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38196 of 2025

Arising Out of PS. Case No.-119 Year-2025 Thana- KASIMBAZAR District- Munger

Pappu Yadav @ Rakesh Kumar Ranjan S/o Nandkishore Yadav R/o Village/
Mohalla- South Shasti Nagar, P.S.- Klashim Bazar, Dist.- Munger

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Ansul, Sr. Adv. Mr.Surya Narayan Kumar, Adv.
For the State	:	Mr.Ajay Mishra, APP
For the Informant	:	Mr.Bharat Lal, Adv. Mr.Rakesh Kumar, Adv.

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

CAV ORDER

10 12-09-2025 I have already heard Mr. Ansul, learned senior
counsel for the petitioner, Mr. Ajay Mishra, learned APP for the
State and Mr. Bharat Lal, learned counsel for the informant.

2. This is an application for grant of anticipatory
bail on behalf of the petitioner in connection with Kashim Bazar
P.S.Case No. 119 of 2025, registered for the offences under
Sections 103(2), 3(5) and 61(2) of the BNS, 2023 and Section
27 of the Arms Act.

3. The informant, Shankar Prasad Roy lodged an FIR,
mentioning therein that he is a retired employee of the
Railways. His son Gautam is in private job in Patna. On
01.05.2025, the informant went to Patna to meet his son Gautam



and on 02.05.2025, he was returning from Patna to his house. Meanwhile, his son Sonu informed on mobile that co-accused Pravin and Vikash, after dragging out Govind Kumar (the son of the informant since deceased), started assaulting. Sonu and Chotu went to rescue Govind. Thereafter, co-accused Vikash caught hold of Govind and Praveen fired at Govind. The accused persons also fired, targetting Sonu and Chotu. It has further been mentioned in the FIR that Pappu Mukhiya (the petitioner) was also there in a Thar vehicle, and Gautam and other persons were present in the street nearby. The occurrence took place at 9.30 (night) on 02.05.2025. Govind, after receiving the gunshot injury, died. The reason behind the occurrence is that a piece of land belonging to co-accused Praveen Kumar is situated in front of the house of the informant. The accused persons used to come on that land. The deceased, according to the FIR, was addicted to sulation gum (an intoxicating substance). In intoxicant state, Govind (the deceased) had some quarrel with the wife of co-accused Praveen Kumar four days prior to the present occurrence. The wife of Praveen Kumar had complained to her husband, and it was the reason that Vikas Yadav, Pappu Yadav (the petitioner), Gautam Yadav and others hatched a conspiracy, in pursuance



whereof, Praveen Yadav fired at the chest of the deceased, causing his instantaneous death.

4. Mr. Ansul, the learned senior counsel for the petitioner, has submitted that the petitioner is innocent and has falsely been implicated. He was *mukhiya* of the village and due to political rivalry, he was made accused in a number of cases, as mentioned in para- 3 of the bail petition, amongst which most of the cases are of trivial nature. The learned counsel has submitted further that the specific allegation to open fire on the deceased, is on co-accused Praveen Kumar, and there is allegation on co-accused Vikas Yadav that he was catching hold of the deceased when Praveen Kumar opened fire on the deceased. He has also submitted that the informant says in his *fardbayan* that the petitioner was present at the place of occurrence in a Thar vehicle, but this fact could not be corroborated in the CCTV footage. He has next submitted that the petitioner has been acquitted in four cases, mentioned in para-3 of the bail petition, and in other cases he has been granted bail. He has submitted further that the informant in his restatement in para-3 of the case diary, has stated that Pappu Mukhia (the petitioner) is a person of criminal nature and he along with other accused persons had convened a meeting at the



house of co-accused Praveen, who is brother-in-law of the petitioner. In that meeting, the petitioner had said that the deceased used to tease his sister, as such, the deceased had no right to remain alive on the earth. The learned counsel has submitted further that the fact that the petitioner was present at the place of occurrence in a Thar vehicle has not been reiterated by the informant in his restatement, nor in his statement under Section 164 of the CrPC.

5. On the other hand, the Mr. Ajay Mishra, the learned APP for the State, has opposed the prayer for bail and submitted amongst *inter alia* that the petitioner is not entitled for privilege of anticipatory bail, since the processes under Sections 82 and 83 have been issued against him. In support of his submission, Mr. Mishra relied upon a number of judicial precedents/rulings.

The first precedent/decision relied upon by Mr. Mishra is the decision of Hon'ble Supreme Court in the case of ***State of Haryana vs. Dharamraj* [2023 Live Law (SC) 739 : 2023 INSC 784]**, para 16 and 17 thereof are extracted hereinbelow:-

“16. What the High Court (also) lost sight of was that the respondent was a declared proclaimed offender. The High



Court notes, at Paragraph 28, that it was not dealing with the prayer seeking quashing of the proclamation proceedings as the same were not made part of the petition before it. As things were, the respondent was declared a proclaimed offender on 05.02.2021, and sought anticipatory bail from the High Court only in October, 2021. As such, it was not correct for the High Court to brush aside such factum, on the basis of averments alone, purporting to explain the backdrop of such declaration by mere inadvertence to a similar-sounding name, in the petition before it, as recorded at Paragraphs 9 and 10 of the Impugned Order. The declaration of the respondent as a proclaimed offender, and such declaration subsisting on the date of the Impugned Order, we are unable to agree with the High Court that the respondent was entitled to 'reform and court correct'.

16 (sic). Para-16 has twice been mentioned in place of para-17. *The respondent, without first successfully assailing the order declaring him as a proclaimed offender, could not have proceeded to seek anticipatory bail. Looking to the factual prism, we are clear that the respondent's application under*



Section 438, CrPC, should not have been entertained, as he was a proclaimed offender. We may note that in Lavesb v State (NCT of Delhi), (2012) 8 SCC 730, this Court was categoric against grant of anticipatory bail to a proclaimed offender. In the same vein, following Lavesb (supra) is the decision in State of Madhya Pradesh v Pradeep Sharma, (2014) 2 SCC 171, where this Court emphasized that a proclaimed offender would not be entitled to anticipatory bail. Of course, in an exceptional and rare case, this Court or the High Courts can consider a plea seeking anticipatory bail, despite the applicant being a proclaimed offender, given that the Supreme Court and High Courts are Constitutional Courts. However, no exceptional situation arises in the case at hand. Following Pradeep Sharma (supra), in Prem Shankar Prasad v State of Bihar, 2021 SCC OnLine SC 955, this Court was unequivocal that the High Court therein erred in granting anticipatory bail ignoring proceedings under Sections 82 and 83, CrPC. In Abhishek v State of Maharashtra, (2022) 8 SCC 282, this Court concluded:

'68. As regards the implication of proclamation having been issued against the appellant, we have no hesitation in



making it clear that any person, who is declared as an “absconder” and remains out of reach of the investigating agency and thereby stands directly at conflict with law, ordinarily, deserves no concession or indulgence. By way of reference, we may observe that in relation to the indulgence of pre-arrest bail in terms of Section 438 CrPC, this Court has repeatedly said that when an accused is absconding and is declared as proclaimed offender, there is no question of giving him the benefit of Section 438 CrPC. (For example, Prom Shankar Prasad v. State of Bihar (2022) 14 SCC 529 : 2021 SCC OnLine SC 955)...”

The second decision referred by Mr. Mishra is the decision in the case of ***Serious Fraud Investigation Office vs. Aditya Sarda*** rendered by the Hon’ble Apex Court ***in SLP (Criminal) No. 13956 of 2023***, para 21 of which is extracted hereinbelow:-

“Recently in Srikant Upadhyay and Others vs. State of Bihar and Another, a very pertinent observations have been made with regard to the powers of the Court to grant anticipatory bail under Section 438 of CrPC. It has been observed that-

"9. It is thus obvious from the catena of



*decisions dealing with bail that even while clarifying that arrest should be the last option and it should be restricted to cases where arrest is imperative in the facts and circumstances of a case, the consistent view is that the grant of anticipatory bail shall be restricted to exceptional circumstances. In other words, the position is that the power to grant anticipatory bail under Section 438, Cr. PC is an exceptional power and should be exercised only in exceptional cases and not as a matter of course. Its object is to ensure that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. (See the decision of this Court in *HDFC Bank Ltd. v. J.J.Mannan & Anr.*4).*

10. When a Court grants anticipatory bail what it actually does is only to make an order that in the event of arrest, the arrested shall be released on bail, subject to the terms and conditions. Taking note of the fact the said power is to be exercised in exceptional circumstances and that it may cause some hindrance to the normal flow of investigation method when called upon to exercise the power under Section 438, Cr.PC, courts must keep reminded of the position that law aides only the abiding



and certainly not its resistant. By saying so, we mean that a person, having subjected to investigation on a serious offence and upon making out a case, is included in a charge sheet or even after filing of a refer report, later, in accordance with law, the Court issues a summons to a person, he is bound to submit himself to the authority of law. It only means that though he will still be at liberty, rather, in his right, to take recourse to the legal remedies available only in accordance with law, but not in its defiance. We will dilate this discussion with reference to the factual matrix of this case. However, we think that before dealing with the same, a small deviation to have a glance at the scope and application of the provisions under Section 82, Cr.PC will not be inappropriate.

11 to 24.....

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."

The third decision relied upon by Mr. Ajay Mishra



is the decision in the case of State of ***Madhya Pradesh vs. Pradeep Sharma***, reported in ***(2014) 2 SCC 171***, para-16 whereof is being extracted hereinbelow:-

“16. Recently, in Lavesb v. State (NCT of Delhi) this Court (of which both of us were parties) considered the scope of granting relief under Section 438 vis-a-vis a person who was declared as an absconder or proclaimed offender in terms of Section 82 of the Code. In para 12, this Court held as under : (SCC p.733)

“12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and declared as “absconder”. Normally, when the accused is “absconding” and declared as a ‘proclaimed offender’, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code is not entitled to the relief of anticipatory bail.

It is clear from the above decision that if anyone is declared as an



absconder/proclaimed offender in terms of section 82 of the Code, he is not entitled to the relief of anticipatory bail.”

The fourth decision relied upon by Mr. Mishra is the case of ***Lovesh Vs. State (NCT of Delhi) (2012) 8 SCC 730***. The learned APP has drawn my attention to para-12 of this decision, which has already been dealt with in the case of ***State of Madhya Pradesh vs. Pradeep Sharma*** (supra) in para-16 thereof.

The fifth decision relied upon by Mr. Mishra is the case of ***Srikant Upadhyay and Ors. vs. State of Bihar & Anr.*** rendered by Hon’ble Apex Court ***in SLP (Crl.) No. 7940 of 2023***, para-19 & 24 whereof are reproduced hereinbelow:-

*“19. Bearing in mind the aforesaid provisions and position, we will refer to certain relevant decisions. In **Savitaben Govindbhai Patel & Ors. v. State of Gujarat, the High Court of Gujarat**, the High Court of Gujarat observed thus: -*

"9. Filing of an Anticipatory Bail Application by the petitioners-accused through their advocate cannot be said to be an appearance of the petitioners-accused in a competent Court, so far as proceeding initiated under Section 82/83



of the Code is concerned; otherwise each absconding accused would try to create shelter by filing an Anticipatory Bail Application to avoid obligation to appear before the court and raises the proceeding under Section 83 of the Code claiming that he cannot be termed as an absconder in the eye of law. Physical appearance before the Court is most important, if relevant scheme of Sections 82 and 83, is read closely."

(underlined supplied)

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.”

6. Mr. Mishra next relied upon the case of ***Abhishek vs. State of Maharashtra and others***, reported in **(2022) 8 SCC 282**. Para-68 of this decision is extracted hereunder:-

“68. As regards the implication of proclamation having been issued against the appellant, we have no hesitation in making it clear that any person, who is declared as an "absconder" and remains out of reach of the investigating agency and thereby stands directly at conflict with law, ordinarily, deserves no concession or



indulgence. By way of reference, we may observe that in relation to the indulgence of pre-arrest bail in terms of Section 438 CrPC, this Court has repeatedly said that when an accused is absconding and is declared as proclaimed offender, there is no question of giving him the benefit of Section 438 CrPC. What has been observed and said in relation to Section 438 CrPC applies with more vigour to the extraordinary jurisdiction of this Court under Article 136 of the Constitution of India. The submissions on behalf of the appellant for consideration of his case because of application of stringent provisions impinging his fundamental rights does not take away the impact of the blameworthy conduct of the appellant. Any claim towards fundamental rights also cannot be justifiably made without the person concerned himself adhering to and submitting to the process of law.”

7. After relying upon the decisions of the Hon’ble Supreme Court, Mr. Mishra, the learned APP has submitted that the petitioner is not entitled for anticipatory bail, since processes under Sections 82 and 83 have already been issued.

8. In reply, Mr. Anshul, the learned senior counsel for



the petitioner, relied upon a decision of the constitution Bench of Hon'ble Supreme Court in the case of ***Shri Gurbaksh Singh Sibbia and others vs. State of Punjab*** reported in (1980) 2 SCC 565. The learned senior counsel has submitted that the constitution Bench of Hon'ble Apex Court has held in unambiguous terms that no bar can be imposed on exercise of the right under Section 438 of the CrPC, except the statutory restrictions. He has submitted that there is no statutory restrictions that on issuance of processes under Sections 82 or 83 of the CrPC, the petitioner has no right to avail the privilege of anticipatory bail. So, merely because processes under Sections 82 and 83 have been issued, it is not an embargo on exercise the statutory right provided under Section 438 of the CrPC. Para-26 of ***Shri Gurbaksh Singh Sibbia*** (supra) is reproduced hereunder:-

“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. Section 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**, that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 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.”*

9. The learned senior counsel for the petitioner has also submitted that in case of **Asha Dubey vs. The State of Madhya Pradesh** in Criminal Appeal No. 4564 of 2024/SLP (CRL) No.



13123/2024, the Hon'ble Supreme Court has been pleased to hold that issuance of process under Section 82 of the CrPC is not a complete embargo on considering the application for grant of anticipatory bail. Para-8 of this decision is extracted hereinbelow:-

“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.”

10. The learned senior counsel for the petitioner has also submitted that the processes under Sections 82 and 83 of the CrPC were issued in mechanical manner, without awaiting the service report and if there is a lacuna in issuance of processes under Sections 82 and 83 of the CrPC, that can be raised at the stage of anticipatory bail. Para-9 of the decision in the case of **Asha Dubey** (*supra*) is being reproduced hereinbelow:-

“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 a violation of the conditions which are to be imposed by the Trial Court or if there are any perceived threats against the witnesses.”

11. Mr. Ansul, the learned senior counsel has submitted further that in the first decision relied upon by the learned APP Mr. Mishra [***(State of Haryana vs. Dharamraj (supra))***], the Hon’ble Supreme Court while holding about desentitlement of an accused on issuance of processes under Sections 82 and 83 of the CrPC, have been pleased to hold that the applicant is not entitled, but certainty he will not be deprived of granting pre-arrest bail in extreme exceptional cases. He submitted that the present case falls in the category of extreme exceptional cases, since the allegation against the petitioner, according to the FIR, is that he was present in Thar vehicle at the time of occurrence, but this fact is missing in his re-statement and also in his statement under Section 164 of the CrPC, which shows that the petitioner was falsely implicated in



the present case. He also submitted that according to para-191 of the case diary, on the basis of CDR and tower location, the petitioner was on different locations and was not at the place of occurrence and the CCTV footage also did not corroborate the presence of the petitioner at the place of occurrence.

12. In reply, the learned APP for the State Mr. Mishra has submitted that the Hon'ble Supreme Court in case of ***State of Haryana vs. Dharamraj*** (*supra*), has been pleased to hold that without assailing the order of declaring him as a proclaimed offender, the accused cannot proceed to seek anticipatory bail. He submits that the petitioner never challenged the order of issuance of processes under Sections 82 and 83 of the CrPC, as such, the issue regarding infirmity in the order of issuance of the processes under Section 82 and 83 of the CrPC cannot be raised by the petitioner at the juncture of hearing of anticipatory bail petition.

13. Mr. Mishra, the learned APP for the State has submitted further that the case of the petitioner does not fall under the category of extreme exceptional cases, because during investigation, it was found that the petitioner was tampering with the evidences. He threatened Rajiv Kumar, Constable No.440 and also the public prosecutor In this regard, an inquiry



was conducted and during inquiry, it was found that the petitioner was involved in threatening the police personnel and the public prosecutor.

14. From perusal of para-218 of the case diary, it transpires that on 02.08.2025, Constable No.440 Rajiv Kumar, who was deputed in prosecution cell, lodged a *senha*, stating therein that he was present in the court of Chief Judicial Magistrate Munger with the investigating officer, for receiving the order of attachment against the petitioner and co-accused Gautam Kumar. The District Public Prosecutor, the Assistant Public Prosecutor and Public Prosecutor were also present and conducting the case on behalf of the State and the learned counsel for the petitioner Mr. Rajnikant Jha was also present in court. At the same time on the veranda, outside the court, 5-6 persons were present and they indicated towards constable Rajiv Kumar and the Public Prosecutor, stating that these persons were demolishing the career of Mukhiyaji (the present petitioner). The constable Rajiv Kumar expressed his apprehension that the petitioner may precipitate untoward incident to this constable and his family members. The copy of the *senha* has been extracted in para-218 of the case diary. Para-219 of the case diary shows that on the basis of allegation of the



constable, Rajiv Kumar, *senha* no. 57 of 2025 was registered on 02.05.2025 and an inquiry thereof was assigned to the ASI Chandan Kumar and he also found in his inquiry that the present petitioner, co-accused Gautam Yadav and his wife Indu Devi were infuriated and they may cause untoward incident. The report submitted by the A.S.I. Chandan Kumar is also attached with the case diary. The criminal antecedents of the petitioner also makes him disentitled for grant of anticipatory bail.

15. On the basis of aforesaid observations, the petitioner's case does not fall in the category of extreme exceptional cases, entitling him for grant of privilege of anticipatory bail.

16. The application is accordingly rejected.

(Nawneet Kumar Pandey, J)

HR/

U		T	
---	--	---	--

