

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.69611 of 2024**

Arising Out of PS. Case No.-3847 Year-2022 Thana- SARAN COMPLAINT CASE District-  
Saran

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1. Upendra Singh Son of Late Ram Sharekh Singh Resident of Village-  
Fulchak Rasalpura, P.S.- Doriganj District- Saran @ Chapra
  2. Nitish Kumar Son of Kalika Ray Resident of Village- Fulchak Lodipur, P.O.-  
Chirand, P.S.- Doriganj District- Saran @ Chapra

... .. Petitioner/s

Versus

1. The State of Bihar
2. Saroj Kumar Singh Son of Late Raghuwansh Singh Resident of Village-  
Rasalpura, P.S.- Doriganj, District- Saran @ Chapra

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr.Rakesh Mohan Singh, Advocate  
For the Opposite Party/s : Mr.Jitendra Kumar Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA**  
**ORAL ORDER**

3      22-01-2025                      Heard Mr. Rakesh Mohan Singh, learned counsel for  
  
the petitioner, Mr. Avanindra Kumar Jha, learned counsel for the  
  
opposite party No.2 and Mr. Jitendra Kumar Singh, learned App  
  
for the State.

2. The petitioners are apprehending their arrest in  
connection with Saran @ Chapra Complaint Case No.3847 of  
2022, (Trial No.1053A/2024), dated 19.12.2022 registered for  
the offences punishable under Sections 467, 468, 471, 420,  
120(B), 386, 504, 506, 149 of the Indian Penal Code and  
Section 27 of the Arms Act but the learned Judicial Magistrate  
1<sup>st</sup> Class, Saran took cognizance under Sections 420 and 506 of



the IPC only against the present petitioners.

3. The prosecution case, in short, is that Saroj Kumar Singh filed complaint against 11 accused persons. A land in Garkha Anchal of Saran district of area 04 bighas 02 kathas and 16 dhurs having equal share in name of Pradeep Singh, Munesar Singh and Mathura Singh. Mathura Singh sold his share to the father of complainant in 1932. On 01.11.1932 complainant came to know that his land bearing Khata No.42, Survey No. 44 has been sold deceptively by Upendra Singh, and Lalo Devi to Kalika Rai, Nitish Kumar and Brijesh Kumar Yadav. One Upendra Singh deceptively sold the same land to Brijesh Kumar and Kalika Rai on 21.10.2022 despite that the grandfather of Upendra Singh had sold his share of land to Ghanshyam Singh. On 17.12.2022, all the FIR named accused persons came to the complainant field with Arms and Ammunition to encroach the said land and on the order of Kalika Rai, Nitish Kumar open fired in the air and asked to leave the land and Trigunanath Rai alongwith his son namely Brijesh Kumar yadav demanded extortion money of Rupees Two Lakhs. Hence this complaint has been filed.

4. Learned counsel for the petitioners submits that petitioners have falsely been implicated in the present case.



Further submits that the complainant has filed the present complaint petition on 19.12.2022 against 11 accused persons including the petitioners. Learned counsel for the petitioners submits that the petitioners have falsely been implicated in the present case. The allegation as alleged in the complaint petition is false and fabricated and the petitioners have not committed any offence as alleged in the complaint petition and it appears from the complaint petition that the present case is the dispute of purely civil nature and complainant has attempted to make to give criminal colour. Learned counsel for the petitioners submits that the anticipatory bail petition was filed before issuance of the process under Section 82 of Cr.P.C. so present anticipatory bail petition is maintainable.

5. Learned counsel for the complainant has filed a counter affidavit stating therein that the petitioners have not come before this Hon'ble Court with clean hands and process under Section 82 Cr.P.C. has been issued against the petitioners on 04.09.2024 and in view of the aforesaid, the present anticipatory bail petition is not maintainable.

6. Learned counsel for the complainant has relied upon the judgment of the Hon'ble Apex Court in the case of **Srikant Upadhyay & Ors. Vs. State of Bihar**, reported in AIR



**2024 Supreme Court 1600** and he has referred the paragraph Nos.21,24,25 and 26, which are being reproduced below:

*“21. To understand and consider another contention of the appellants it is worthy to extract ground No.3 raised by the appellants in SLP which reads thus:*

*“III. Because the Hon’ble High Court has failed to appreciate that proclamation under section 82 Cr.P.C. was issued on 04.01.2023 by the Ld. Trial Court and thereafter process under section 83 Cr.P.C. have been initiated on 15.03.2023 whereas the application for anticipatory bail by the petitioner before the Hon’ble High Court was filed in November, 2022, however, the same was came for hearing on 04.04.2023. It is, therefore, evident that when the petitioners preferred filing of anticipatory bail before the Hon’ble High Court then none of the petitioner was declared absconder and process under section 82/83 Cr.P.C. were not initiated against them.”*



*“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”.*

*“25.The factual narration made hereinbefore would reveal the consistent disobedience of the appellants to comply with the orders of the trial Court. They failed to appear before the Trial Court after the receipt of the summons, and then after the issuance ofailable warrants even when their co-accused, after the issuance ofailable warrants, applied and obtained regular bail. Though the appellants filed an application, which they themselves described*



*as “bail-cum-surrender application” on 23.08.2022, they got it withdrawn on the fear of being arrested. Even after the issuance of non-bailable warrants on 03.11.2022 they did not care to appear before the Trial Court and did not apply for regular bail after its recalling. It is a fact that even after coming to know about the proclamation under Section 82 Cr.PC., they did not take any steps to challenge the same or to enter appearance before the Trial Court to avert the consequences. Such conduct of the appellants in the light of the aforesaid circumstances, leaves us with no hesitation to hold that they are not entitled to seek the benefit of pre-arrest bail”.*

*“26.The upshot of the discussion is that there is no ground for interfering with the order of the High Court rejecting the application for anticipatory bail rather not considering application on merits. Since their action is nothing short of defying the*



*lawful orders of the Court and attempting to delay the proceedings, this appeal must fail.*

*Consequently, it is dismissed”.*

7. Apart from the aforesaid, learned counsel for the complainant has relied upon the order dated **01.12.2022** passed in **Cr.Misc. No.12922 of 2022** in the case of **Arjun Kumar Vs. The State of Bihar**.

8. Learned counsel for the petitioner has relied upon the relevant portion of order **01.12.2022** passed in **Cr.Misc. No.12922 of 2022** in the case of **Arjun Kumar Vs. The State of Bihar**, which is at page-16 and the same is being reproduced hereinbelow:

*“Decisions of Hon’ble Supreme Court in the case of **Lavesh v. State (NCT of Delhi)** reported in **(2012)8 SCC 730** and in the case of **Prem Shankar Prasad vs. The State of Bihar and another**, reported in **AIR 2021 SC 5125** 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”.*

9. In views of the aforesaid findings of the Hon’ble Apex Court and also in view of the process under Section 82 Cr.P.C. which has been issued against the petitioners, I find that this is not a fit case for grant of anticipatory bail to the petitioners in connection with Saran @ Chapra Complaint Case No.3847 of 2022, (Trial No.1053A/2024), pending in the court of learned Chief Judicial Magistrate, Saran at Chapra.

10. Prayer is refused.

**(Rajesh Kumar Verma, J)**

Nitesh/-

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