

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36088 of 2026

Arising Out of PS. Case No.-100 Year-2021 Thana- MUSAHARI District- Muzaffarpur

1. Pankaj Kumar S/o Wakil Thakur Residents of village- Jhikti, P.S.- Kurhani, District- Muzaffarpur
2. Ankaj Kumar S/o Wakil Thakur Residents of village- Jhikti, P.S.- Kurhani, District- Muzaffarpur
3. Pappu Kumar S/o Wakil Thakur Residents of village- Jhikti, P.S.- Kurhani, District- Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Verma, Adv.
For the Opposite Party/s : Mr. M.K. Nirala, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

4 27-07-2026 Heard Mr. Sanjay Kumar Verma, learned Advocate
for the petitioners and Mr. M.K. Nirala, learned Additional
Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in connection with Mushahari P.S. Case No. 100 of 2021, registered for the offences punishable under Sections 147, 149, 341, 323, 452, 307 & 302 of the Indian Penal Code.

3. Allegedly on the fateful day, i.e. on 02.06.2021, the informant's son Pankaj Kumar had a fight with one Sanjay Kumar and thereafter all the named accused persons in the FIR, hatching a conspiracy barged into the house of the informant



and brutally assaulted her son due to which, the informant's son sustained serious injuries and subsequently, he was taken to hospital where the Doctor declared him dead.

4. Learned Advocate for the petitioners submitted that from the FIR, it is evident that these petitioners neither entered into the house of the informant nor they were attributed any specific role leading to any injury to the accused. The falsity of the case is also evident that so far petitioner no. 1 Pankaj Kumar is concerned, his marriage was solemnized on 31.05.2021 and all these petitioners were engaged in attending marriage rituals and thus the possibility of their presence even at the place of crime is completely ruled out. The alleged occurrence took place in the fateful night of 02.06.2021, but the present FIR came to be instituted on 07.06.2021 and, as such, false implication and exaggeration cannot be ruled out. The name of the petitioners were implicated only on account of they being relatives of some of the accused persons that too in order to wreck vengeance and mount pressure. However, good sense prevailed over the informant, who herself filed an application before the learned trial Court stating therein that these petitioners were not involved in the incidence and so she does not want to pursue the matter against the petitioners. The copy



of the aforesaid application has also been placed on record as Annexure- P/3.

5. Learned Advocate for the petitioners further contended that since the petitioners were residing outside and thus, they were not conversant with the institution of the present case and accordingly the delay has occurred and, in the meantime, the process under Sections 82 and 83 of the Cr.P.C. has been executed.

6. Referring to a decision passed by the Hon'ble Supreme Court in the case of *Asha Dubey Vs. The State of Madhya Pradesh : MANU/SCOR/124926/2024*, it is submitted that whenever the liberty of the accused is pitted against, the 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. It is not as if in all cases that there will be a total embargo on considering the application for grant of anticipatory bail.

7. Reliance has also been placed on a decision passed by the Hon'ble Supreme Court in the case of *Saikat Sen Gupta & Ors Vs. The State of Bihar (Special Leave to Appeal (Crl.) No(s) 3786 of 2026)*, wherein, when this Court has negated the prayer for anticipatory bail of the petitioners, the Hon'ble



Supreme Court taking note of the materials available on record directed the petitioners to appear before the investigation officer and later on, on being found that the petitioners have been able to make out a case for grant of anticipatory bail, allowed the same with a direction that the petitioners shall continue to co-operate with the investigation.

8. On the other hand, learned Advocate for the State opposed the pre-arrest bail application and submitted that the facts are admitted to the extent that occurrence took place on 02.06.2021 and even as per the admission of the petitioners they were engaged in marriage and thus all of them were present in the village itself and, as such, the contention of the petitioners' that they were not acquainted with the factum of incidence is highly doubtful.

9. During the interregnum period, all the accused persons including the female accused persons, they have surrendered and extended the benefit of regular bail, but the petitioners were all along evading the arrest and, as such, they do not deserve the privilege of anticipatory bail. So far the application filed by the informant is concerned the same has been filed when the process of Sections 82 and 83 of the Cr.P.C. has already been executed, all the more the FIR has been



instituted under Section 302 and other allied Sections of the IPC and, as such, not compoundable.

10. This Court has considered the submissions advanced on behalf of the respective parties and taken note of the materials available on record. There is no dispute with regard to the settled position of law that despite the issuance of process under Sections 82 and 83 of the Cr.P.C., there is no complete embargo in considering the application for anticipatory bail, if the applicant(s) is/are able to make out a case, extraordinary in nature.

11. Right from inception in the case of *Lavesh Vs. State (NCT of DELHI) : (2012) 8 SCC 730*, the Hon'ble Supreme Court ruled that when an accused is absconding and declared as proclaim offender, there is no question of granting anticipatory bail. The Court further reiterated that when a person against whom, warrant has 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 Cr.P.C. is not entitled the relief of anticipatory bail.

12. Similar view was taken in the case of *Prem Shankar Prasad Vs. State of Bihar : (2021) SCC OnLine SC 955*, wherein the Hon'ble Supreme Court observed in para. 19



and 20, which are as follows:

“19. Despite the above observations on merits and despite the fact that it was brought to the notice of the High Court that Respondent 2-accused is absconding and even the proceedings under Sections 82/83 CrPC have been initiated as far back as on 10-1-2019, the High Court has just ignored the aforesaid relevant aspects and has granted anticipatory bail to Respondent 2-accused by observing that the nature of accusation is arising out of a business transaction. The specific allegations of cheating, etc. which came to be considered by the learned Additional Sessions Judge has not at all been considered by the High Court. Even the High Court has just ignored the factum of initiation of proceedings under Sections 82/83CrPC by simply observing that “be that as it may”. The aforesaid relevant aspect on grant of anticipatory bail ought not to have been ignored by the High Court and ought to have been considered by the High Court very seriously and not casually.

*20. In **State of M.P. v. Pradeep Sharma, (2014) 2 SCC 171**, it is observed and held by this Court that if anyone is declared as an absconder/proclaimed offender in terms of Section 82CrPC, he is not entitled to relief of anticipatory bail....*



13. The identical issue has also come up for consideration in the case of *Abhishek Vs. State of Maharashtra and Ors. : (2022) 8 SCC 282* wherein the Hon'ble Supreme Court has said that whosoever 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. Further in case of *State of Haryana Vs. Dharamraj : (2023) 17 SCC 510*, the similar pronouncement was made by the Hon'ble Supreme Court, where the Court reinforced the aforesaid mandate, however, it is crystallized that in an exceptional and rare case, this Court or the High Court can consider a plea seeking anticipatory bail, despite the applicant being a proclaimed offender being constitutional courts. The case of *Asha Dubey* (supra) has already been dealt with earlier, that there will not be total embargo to consider the pre-arrest bail, even after issuance of process up 82 and 83 Cr.P.C.

14. In the light of the aforesaid proposition of law, now coming to the facts of the case. It is admitted that the occurrence took place on 02.06.2021 and altogether twelve persons, including the petitioners, have been made accused with an allegation of participation in causing the death of the



informant's son. All the other accused persons have surrendered and granted regular bail. So far the petitioners are concerned, the process under Section 82 Cr.P.C. was issued and later on 83 Cr.P.C. has also been executed. The property of the petitioners, as it appears from the record, were duly attached and subsequent thereto, they have approached the court below for grant of anticipatory bail, however, which was turned down.

15. The reliance of the petitioners in the case of ***Saikat Sen Gupta*** (*supra*) with utmost regard is not applicable as the case was with respect to an offence in the nature of Criminal breach of trust and cheating and the First Information Report was instituted in the year 2024, whereas in the case at hand, the FIR was instituted long back in the year 2021, in connection with a case of murder of an young boy, nonetheless the petitioners remained absconded for more than five years and subsequently, the process of attachment has also been executed.

16. Considering the aforesaid facts, this Court is not acceded to the prayer for anticipatory bail of the petitioners, accordingly the same stands rejected.

17. However, it is observed that, if the petitioners surrender before court below, preferably within a period of four weeks from today, their prayer for bail shall be considered



without being prejudiced by the order of this Court.

(Harish Kumar, J)

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