

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.65417 of 2025

Arising Out of PS. Case No.-8 Year-2009 Thana- COMPLAINT CASE District- Lakhisarai

Umesh Saw S/o Late Musharu Saw At present R/O- Ballamgarh, P. S. - Ballamgarh, District- Hariyana, Petmanent R/O- Amari, P. S. - Dharhara, District- Munger.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sunita Kumari W/o Sri Umesh Saw, D/o Shri Bindeshwari Saw R/o Maheshpur, P.O. - Abhaiypur, P.s.- Abhaiyapur, Dist.- Lakhisarai

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Rajesh Kumar, Advocate
For the Opposite Party	:	Mr. Pawan Kumar Chaurasia, APP
For the Informant	:	Mrs. Rakhi Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 21-01-2026 Heard learned counsel for the petitioner, learned counsel for the informant and learned APP for the State.

2. The petitioner apprehends his arrest in connection with Lakhisarai Complaint Case No. 8C of 2009 for the offences punishable under Sections 498A, 406 of the Indian Penal Code and Section 3 and 4 of the Dowry Prohibition Act.

3. As per the prosecution case, the petitioner and the co-accused persons are alleged to have tortured the complainant mentally and physically due to non-fulfillment of demand of dowry.

4. It has been submitted by the learned counsel for the petitioner that the petitioner is innocent and he has falsely been



implicated in this case. The petitioner is the husband of the informant. He further submits that the petitioner has no criminal antecedent.

5. The learned APP for the State has vehemently opposed the prayer of the petitioner and has submitted that process under Section 82 and 83 of Cr.P.C. has been issued against this petitioner as the petitioner did not appear before the Court.

6. I have heard and considered the submissions of the parties and have gone through the records of the case.

7. Before I proceed to consider the prayer of the petitioner for grant of anticipatory Bail, it is imperative to discuss whether anticipatory bail petition is maintainable in view of the proceedings under Sections 82 and 83 Cr.PC, corresponding to Sections 84 and 85 B.N.S.S respectively. This question is not *res-integra*. The Hon'ble Supreme Court has considered this question on several occasions:

8. In Lavesb v. State (NCT of Delhi), (2012) 8 SCC 730

the Hon'ble Supreme Court has held as follows:

"12.. 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 he is not entitled to the relief of anticipatory bail."

9. The Hon'ble Supreme Court in Prem Shankar Prasad v. State of Bihar, (2021) SCC OnLine SC 955 has observed as under:

"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 82/83 CrPC 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 82 CrPC, he is not entitled to relief of anticipatory bail.....

21. Thus the High Court has committed an error in granting anticipatory bail to Respondent 2-accused ignoring the proceedings under Sections 82/83 CrPC."

10. In Abhishek Vs. State of Maharashtra and Ors.,(2022) 8 SCC 282, the Hon'ble Supreme Court has held as



follows:

"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 438CrPC, 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 438CrPC

11. In State of Haryana Vs. Dharamraj, (2023) 17

SCC 510, the Hon'ble Supreme Court has held as follows:

"18. We may note that in Laves 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 Laves v. State (NCT of Delhi), (2012) 8 SCC 730 is the decision in State of M.P. v. Pradeep Sharma, (2014) 2 SCC 171, where this Court emphasised 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.

19. Following State of M.P. v. Pradeep Sharma, (2014) 2 SCC 171, in Prem Shankar Prasad v. State of Bihar, (2022) 14 SCC 516, this Court was unequivocal that the High Court therein erred in granting anticipatory bail ignoring proceedings under Sections 82 and 83CrPC.....

12. In Asha Dubey Vs. The State of Madhya



Pradesh, as reported in **MANU/SCOR/124926/2024**, Hon'ble

Supreme Court has again held as follows:

"8. Coming to the consideration of anticipatory bail. in the event of the declaration under Section 82 of the Cr.PC, 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 a violation of the conditions which are to be imposed by the Trial Court or if there are any perceived threats against the witnesses."

(Emphasis supplied)

13. In the recent decision in the case of **Serious Fraud Investigation Office v. Aditya Sarda, [2025 SCC OnLine SC 764]**, it has been observed as follows:

"23. The High Courts should also consider the factum of issuance of non bailable warrants and initiation of proclamation proceedings. seriously and not casually, while considering the anticipatory bail application of such accused."

14. Considering the submission of the parties and in view of the law laid down by the Hon'ble Supreme Court in the afore-quoted judgments, this application of grant of anticipatory bail is allowed.



15. Let the petitioner, above named, in the event of his/her arrest or surrender before the concerned Court below within four weeks from today, be released on bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned S.D.J.M., Lakhisarai in connection with Lakhisarai Complaint Case No. 8C of 2009 subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 / Section 482 of the B.N.S.S.

16. As a condition of this order, the petitioner is directed to pay a maintenance amount of Rs. 5,000/- from the month of January, 2026 to the informant and the maintenance for the month of January, 2026 shall be paid to the informant before 31.01.2026 and thereafter the maintenance amount shall be paid to the informant every month before the 15th day of the month.

(Sandeep Kumar, J)

Atul/-

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

