

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73862 of 2025

Arising Out of PS. Case No.-287 Year-2024 Thana- MADANPUR District- Aurangabad

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1. Vikash Kumar @ Vikash Paswan S/o Kouleshwar Paswan @ Kauleshar Paswan R/o Village- Chariya, P.S.- Madanpur, District- Aurangabad
 2. Anuj Kumar @ Anuj Paswan @ Anoj Kumar S/o Kouleshwar Paswan @ Kouleshwar Paswan R/o Village- Chariya, P.S.- Madanpur, District- Aurangabad

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Bachan Jee Ojha, Adv. Mr. Binod Kumar Pandey, Adv.
For the State	:	Mr. Aditya Narayan Singh1, APP
For the O.P. No. 2	:	Ms. Leelawati Kumari, Adv.

CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL ORDER

3 18-02-2026 Heard the learned counsel for the petitioners, the learned counsel for the opposite party No. 2 as well as the learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in connection with Madanpur P.S. 287 of 2024 registered for the offence(s) under Section(s) 109 and 3(5) of the Bharatiya Nyaya Sanhita, 2023 (B.N.S.) and Section 103 (1) of the B.N.S. was later added on.

3. The prosecution story in short is that while the informant's brother was sleeping in his courtyard, the accused



persons assaulted his brother with an axe causing injury to the right side of his head. He raised *hulla* upon which his wife and daughter-in-law reached there and saw the accused persons having axe in their hand and thereafter they fled away. Later on, he died in course of treatment.

4. The learned counsel for the petitioners submits that the petitioners are innocent and they have falsely been implicated in this case as the story is false and concocted. It has been submitted that there is no eye-witness to the occurrence and that no incriminating material has been recovered either from the possession or from the house of the petitioners. It has further been submitted that there is a delay of seven days in lodging of the FIR without any valid reason.

5. The learned counsel for the petitioners next submits that one Pratima Kumari had earlier given a *fardbeyan* on 24.07.2024 at Om Fortis Hospital and had named one Shivman Bhuiyan and Ajay Bhuiyan to have assaulted her father-in-law with *Kulhari* and *Fasuli* respectively. However, the said *fardbeyan* mysteriously not formed the basis of the present case and as an after thought, a written report was submitted after seven days of the incident. It has been submitted that the allegation made upon the petitioners, of assaulting with *Fasuli*,



in the said *fardbeyan*, does not find support from the *post-mortem* report. It has also been submitted that after fifteen days of the alleged occurrence, the victim died and, hence, Section 103(1) BNS was added. It has next been submitted that the police, after investigation, submitted final form against the petitioners, however, the learned Court of Judicial Magistrate, without appreciating that there was nothing on record to suggest the involvement of the petitioners, has taken cognizance against them. It has lastly been submitted that the petitioners have no criminal antecedents.

6. The learned A.P.P. for the State and the learned counsel for the opposite party No. 2 have vehemently opposed the prayer for grant of anticipatory bail to the petitioners.

7. The learned counsel for the opposite party No. 2 submits that the petitioners are named accused in the present case and there is allegation upon the petitioners, having been found to be fleeing from the place of occurrence. It has further been submitted that process under Sections 82 and 83 Cr.P.C. has already been effected against the petitioners and hence the anticipatory bail is not maintainable and thus the application be rejected.

8. To the preliminary objection raised by the learned



counsel for the opposite party No. 2 as regards to the maintainability of the anticipatory bail application, the judgment rendered by the Hon'ble Supreme Court in the case of ***Asha Dubey Vs. State of Madhya Pradesh***, reported in ***2024 SCC OnLine SC 5633*** in paragraph nos. 8 and 9 has held as under:-

“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.

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.”

9. Thus, the objections raised by the learned counsel for the O.P. No. 2 with regard to anticipatory bail being not maintainable once the process under Sections 82 and 83 CrPC



has been issued, is not tenable in law, especially on account of the fact that the petitioners were not shying away from appearing before the court rather they were pursuing their statutory right of grant of anticipatory bail.

10. This court in the present case has found that initially one FIR was recorded at the hospital wherein Pratima Kumari had given her statement that one Shivman Bhuiyan and Ajay Bhuiyan have assaulted her father-in-law with *Kulhari* and *Fasuli* respectively, however, the same was never brought on record and later it was replaced by a written report. It is also a fact that the police had initially submitted a final form against the petitioners and thereafter, differing from the same, the learned court of judicial magistrate had taken cognizance.

11. Therefore, in view of the said background, I find that it is a fit case for grant of anticipatory bail especially for the fact that there is no specific allegations against the petitioners and barring suspicion there is no evidence against them, let the petitioners, above-named, be released on anticipatory bail, in the event of their arrest or surrender before the concerned Court/successor Court within a period of four weeks from today, on their furnishing bail bond in the sum of Rs. 10,000/- (Rupees Ten Thousand) each with two sureties of the like amount each to



the satisfaction of the concerned Court/successor Court where the case is pending in connection with Madanpur P.S. Case No. 287 of 2024, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973 read with corresponding Section 482(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (B.N.S.S.) as well as subject to the following conditions :

(i) One of the bailors of the petitioners shall be their close relative and the other shall be a local resident.

(ii) The petitioners shall remain physically present before the concerned Court on each and every date of the trial and shall cooperate in the investigation.

(iii) In case of absence for two consecutive occasions or in violation of the terms of the bail, the bail bond of the petitioners will be liable to be cancelled by the concerned Court.

(iv) If the petitioners, in future, is found to be involved in similar nature of offence(s), the prosecution shall be at liberty to move for cancellation of their bail bond.

(v) The concerned Court shall verify the criminal antecedent of the petitioners and in case, at any stage, it is found that he has concealed their criminal antecedent, the Court concerned shall take necessary steps for cancellation of their bail



bond. However, the acceptance of bail bond in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

12. It is made clear that the observations, if any, made in this order, shall be of no bearing during the trial.

13. The application stands allowed.

(Sourendra Pandey, J)

Praveen-II/
aditya/-

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