

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (SJ) No.4228 of 2024

Arising Out of PS. Case No.-38 Year-2023 Thana- SC/ST District- Madhubani

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1. Ashok Thakur Son of Kishori Thakur Village- Faint, Ps- Basopatti, Dist-Madhubani
2. Pawan Thakur Son of Kishori Thakur Village- Faint, Ps- Basopatti, Dist-Madhubani
3. Punita Kumari wife of Surendra Thakur Village- Faint, Ps- Basopatti, Dist-Madhubani P/A- Belour, Ps- Manigachhi, Dist- Darbanga

... ... Appellant/s

Versus

1. The State of Bihar
2. Ramchandra Ram Son of Late Dukhmochan Ram Village- Faint, Ps- Basopatti, Dist- Madhubani

... ... Respondent/s

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Code of Criminal Procedure---section 79, 82---Indian Penal Code---section 341, 323, 504, 354(B), 379, 506/34---Daiyn Act---section 3/4 ----S.C. & S.T. Act 1983---section 3(i)(r)(s)(w), 3(2)(va)---application for setting aside the order of proclamation (U/sec.-82 of Cr. P.C.) against the appellants on the ground that neither summon nor B.W. and N.B.W. have been issued against the appellants nor Tamila of same are available on record----Held: The fact remains that an FIR came to be lodged on 10.06.2023 with specific allegations, the appellants chose not to take recourse to the legal remedy and it was only after the Police failed to arrest them, petition was filed after returning the non-bailable warrant, the appellants came out of deep slumber---though the Court concerned should have been cautious in recording certain facts mandated under section 82 of the Cr.P.C., that cannot be a ground to set aside the said order when it is seen in totality and particularly when the appellants remained in deep slumber for a long period---no case of interference is made out in the present petition---petition rejected. **(Para-1, 21, 24)**

Cr. Misc. No. 66151 of 2023, Cr. Misc. No. 629 of 2018
.....**Differentiated.**

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... .. Respondent/s

Appearance :	
For the Appellant/s	: Mr.Subhash Kumar Jha, Advocate
For the Respondent/s	: Mr.Binay Krishna, APP
For the informant	: Mr.Ravi Prakadh, Advocate
	Mr. Udeshya Kumar Yadav, Advocate
	Mr. Rajesh Kumar, Advocate
	Mr. Vinod Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
Date : 20-01-2025

Heard the parties.

2. Pursuant to the last order of coordinate bench, SI, Aman Kumar Singh is present in the Court.

3. The present application has been preferred for setting aside the Order dated-10.06.2024, passed in G.R. No. 77 of 2023/S.C. & S.T. P.S. Case No. 38 of 2023, by the learned Additional Sessions Judge Cum Special Judge, S.C. & S.T. Act Madhubani, by which he has pleased to pass an order of



proclamation (U/sec.-82 of Cr. P.C. process) against the appellants in connection with S.C. & S.T. P.S. Case No. - 38 of 2023, dated 10.06.2023, corresponding to G.R. No.- 77 of 2023 registered for offence u/sec.- 341, 323, 504, 354(B), 379, 506/34 of Indian Penal Code and Section and 3/4 of Daiyn Act and sections 3(i)(r)(s)(w), 3(2)(va) of S.C. & S.T. Act 1983 as neither summon nor B.W. and N.B.W. have been issued against the appellants nor Tamila of same are available on record.

4. As per the prosecution story, the informant alleged that eyeing his piece of land, the accused came and wanted to construct the house. When the informant objected, was abused by taking caste name and allegation against these appellants is/are that he put a towel around his neck and tried to press it while other accused outraged the modesty of his wife as also took away certain amount/ornaments. As the Police earlier failed to lodge FIR, filed complaint whereafter finally the FIR was lodged.

5. The case came to be registered on 10.06.2023. The investigation took place in the matter and finally on 18.12.2023, the Police submitted petition before the concerned Court for issuance of warrant against the accused persons including these appellants. The order as such was received by the Police on



20.12.2023 by which non bailable warrants were issued against all the accused persons including the appellants.

6. From the record, it seems that the other accused persons immediately preferred bail after surrendering before the Court on 27.01.2024 and they were extended the relief. However, the appellants evaded arrest. The case diary shows that the Police visited the house of the appellants alongwith the warrant on 18.01.2024 but the accused were found absconding. On 28.02.2024 again, the Police tried to execute the warrant but found the accused absconding. The same fact has been recorded by the Police in the case diary on 06.04.2024 and thereafter on 05.06.2024.

7. It was in the said background that the Police through the State submitted petition by returning the non-bailable warrant against the accused, Ashok Thakur, Pawan Thakur and Punita Kumari with further prayer to the Court to pass an order for putting up the poster against the accused persons under section 82 of the Cr. P.C.

8. On 20.06.2024, the Court accepted the said prayer/petition of the Police and accordingly, an order was passed. Learned counsel for the appellants upon query by the Court whether they preferred anticipatory bail, it was submitted



that in the month of September, 2024, anticipatory bail was preferred which was rejected by the concerned Court. Later, Cr. Appeal (SJ) No. 4944 of 2024 was filed against the said order by the appellants herein in which interim protection has been granted on 30.10.2024 by the coordinate bench and is presently pending before the learned Special Judge, (S.C & S.T. Act), Madhubani.

9. Thereafter, the present petition has been filed by the same set of accused persons challenging the order dated 10.06.2024.

10. It is the case of the appellants that from the order dated 10.06.2024, it is not reflected that the non-bailable warrant was returned to the Court whereafter having been satisfied, the aforesaid order was passed. He submits that in that background, interference is required.

11. Learned counsel for the appellants further submitted that they are the resident under the jurisdiction of Basopatti Police Station whereas the case has been lodged under SC/ST Act and as such the Police in view of the section 79 of the Cr.P.C. was required to take the police officials of Basopatti Police Station in confidence before making a raid on their house.



12. He has taken this Court to **section 79** of the **Cr.P.C.** which read as follows:

1. When a warrant directed to a police officer is to be executed beyond the local jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to an Executive Magistrate or to a police officer not below the rank of an officer-in-charge of a police station, within the local limits of whose jurisdiction the warrant is to be executed.

2. Such Magistrate or police officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same, and the local police shall, if so required, assist such officer in executing such warrant.

3. Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police officer within whose local jurisdiction the warrant is to be executed



will prevent such execution, the police officer whom it is directed may execute the same without such endorsement in any place beyond the local jurisdiction of the Court which issued it.

13. It is his further submission that process required under **section 82** of the **Cr.P.C.** was not followed again by the learned Court inasmuch his satisfaction is missing. In support of his case, learned counsel for the appellants has drawn attention of this Court to an order of learned Single Judge (**Sanjay Kumar vs. the State of Bihar & Anr.**) as his Lordship then was in **Cr. Misc. No. 629 of 2018** with specific reference to paragraph 23 which read as follows:

*23. In **Inder Mohan Goswami** (supra) as to when a non bailable warrant of arrest can be issued has been succinctly set out by the Supreme Court by emphasizing that arrest or imprisonment means deprivation of rights to individual and, thus, the courts have to be extremely careful before issuing non-bailable warrant of arrest. In the said case, the Supreme*



Court observed-

"53. Non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. This could be when:

- it is reasonable to believe that the person will not voluntarily appear in court, or*
- the police authorities are unable to find the person to serve him with a summon, or*
- it is considered that the person could harm someone if not placed into custody immediately.*

54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred.



The warrants either bailable or non- bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive

55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is



avoiding the court's proceeding intentionally, the process of issuance of the non bailable warrant should be resorted to Personal liberty paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.

56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and social interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused charged with the commission of as offence of a heinous crime and is feared that he is likely to



tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

57. The Court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non bailable warrant.

14. However, learned counsel concedes that the order relates to non-bailable warrant and not to section 82 of the Cr.P.C. .

15. He has further drawn attention of this Court to another learned Single Judge order (**Ajeet Kumar vs. the State of Bihar & Anr.**) on 14.08.2024 in **Cr. Misc. No. 66151 of 2023** with specific reference to sub paragraph 21 of paragraph 10 of the in which quoting Sanjay Kumar's case, the following observation has been made.

21.In the present case, as seen above, after issuance of summonses there is no report that they were served upon the accused persons



and in absence of service report of the summonses, the court issued warrants of arrest against the accused persons. Further, in absence of service report of bailable warrants of arrest, the court issued non- bailable warrants of arrest against the accused persons. Furthermore, there being no report regarding service of summonses, bailable warrants of arrest and non-bailable warrants of arrest and without expressing satisfaction that the accused persons are absconding or concealing themselves, the learned Magistrate passed order for publishing a written proclamation requiring the petitioner to appear before the court and even without satisfying himself as to whether written proclamation was even



published again issued a composite order under Section 82 and 83 of the Cr.P.C.

16. Again it is the submission of the learned counsel for the appellants that it relates to issuance of warrant after summons were issued. Lastly, he has relied on the order of learned Single Judge of **Allahabad High Court (Pradeep Agnihotri vs. the State of U.P. & Anr.)** with specific reference to paragraph-10 which read as follows:

10. The Apex Court in the case in re: Inder Mohan Goswami and another vs. State of Uttaranchal and others reported in (2007) 12 SCC 1 has observed the mechanism as to how the liberty of any person may be curtailed inasmuch as every citizen has got fundamental right of his liberty under Article 21 of the Constitution of India. Such liberty may be curtailed by the court concerned if the court has got specific and cogent reason and that



reason must be mentioned while issuing the proclamation order. The relevant paras-53. 54. 55. 56 & 57 of the aforesaid case are being reproduced here under:-

"When non-bailable warrants should be issued.

53. Non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. This could be when:

"it is reasonable to believe that the person will not voluntarily appear in court, or "the police authorities are unable to find the person to serve him with a summon, or "it is considered that the person could harm someone if not placed into custody immediately.

54. As far as possible, if the court is of the opinion that a summon will



suffice in getting the appearance of the accused in the court, the summon or theailable warrants should be preferred. The warrants eitherailable or non-ailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive.

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warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the courts proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.

56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that



he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

57. The Court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-bailable warrant."

17. It is his submission that the Court concerned having not recorded the return of the warrant as also satisfaction, the order is fit to be interfered with.

18. Learned Counsel for the State on the other hand has again taken this Court to paragraph 121 of the case diary in which it has been recorded that the non-bailable warrant against the accused persons are being returned with a prayer to issue order for affixing poster against them. He submits that though the actual line may be missing in the order, it has to be read in totality with the case diary where it is clear that the Police returned the non-bailable warrant and made request for affixing the poster on the house of the accused persons and as such in



that background, no case of the appellants is/are made out.

19. It is his further submission that the orders which the learned counsel for the appellants has drawn attention of this Court relates to issuance of summons and subsequently, the warrant which in turn can not be compared with the present case where it is clear from the facts that after the issuance of the non-bailable warrant was issued by the Court, upon knowledge, though some of the accused persons chose to surrender and take bail, the present appellants chose to look the other way and the Police after repeatedly raiding the house found them to be absconding from their house, in that background, when the case diary records that non-bailable warrants is/are returned with prayer for the issuance of an order for affixing the poster against the accused persons, there is no illegality in the said order.

20. So far as the respondent no.2 represented by his lawyer is concerned, the submission is that despite the occurrence having taken place two years ago with the specific allegation against appellant no.1 Ashok Thakur that he put a towel around the neck of the victim to choke his respiration, successfully evaded arrest and now despite getting interim protection granted in belated anticipatory bail application wants



to stable the proceeding.

21. Having gone through the facts of the case as also the material on record and the submissions put forward herein, this Court finds force in the submission put forward by the learned Counsel for the State as also learned Counsel for the respondent no.2. The facts will always get priority in such cases. The fact remains that an FIR came to be lodged on 10.06.2023 with specific allegations, the appellants chose not to take recourse to the legal remedy, much later, arrest warrant came to be issued. Immediately, the other accused persons surrendered and took bail, dates of which have already been recorded above.

22. The appellants specially appellant no.1 against whom specific allegation has been made however, chose to look other way. It is not his case that he alongwith the other two appellants immediately went for anticipatory bail and upon rejection moved this Court for grant of relief. It was only after the Police failed to arrest them, petition was filed after returning the non-bailable warrant, the appellants came out of deep slumber and two different petitions have been filed, one after rejection of their anticipatory bail by the court concerned through Cr. Appeal No. 4944 of 2024 for anticipatory bail as



stated above in which they are under interim protection as also the present appeal.

23. So far as the orders passed by the different learned Single Benches of Patna High Court as well as Allahabad High Court are concerned, learned State counsel rightly pointed out that the same relates to summon/warrant and the facts of the said case in no way matches the present case where different dates clearly show that the Police took recourse to all the remedy and only after passage of one year and when the appellants chose not to seek any legal remedy while evading arrest, went for the issuance of process under section 82 of the Cr.P.C. after returning the arrest warrants which was granted.

24. Though the Court concerned should have been cautious in recording certain facts which is mandated under section 82 of the Cr.P.C., that cannot be a ground to set aside the said order when it is seen in totality and particularly when the appellants remained in deep slumber for a long period.

25. In that background, this Court is of the opinion that no case of interference is made out in the present petition. It is accordingly rejected. The interim protection granted dated 23.10.2024 stands vacated.

26. So far as the appearance of the Aman Kumar



Singh, Sub Inspector of Police with the SC/ST Police Station, Madhubani is concerned, according to him, he has joined only on 15.12.2024 and immediately after he came to know about the present order, has presented himself. In that background, after cautioning him to be careful in future, his appearance stands dispensed with.

27. The petition is dismissed. Let a copy of the order be sent to the concerned Court in connection with G.R. No. 77 of 2023/S.C. & S.T. P.S. Case No. 38 of 2023 pending before the learned Special Judge (SC & ST Act), Madhubani.

(Rajiv Roy, J)

Ravi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	
Transmission Date	

