

- ABC 2025 (II) 623 Patna**  
**ACQUITTAL & BAIL CASES**  
**HIGH COURT OF PATNA**  
(Jitendra Kumar,J.)  
Criminal Appeal No. 33213 of 2025  
Decided On 27 August 2025
- MANGALI DEVI @ MANGARI DEVI & OTHERS** - Appellant(s).  
**Versus**  
**STATE OF BIHAR** - Respondent(s).
- c** Law Covered:- (A) *Bharatiya Nagarik Suraksha Sanhita, 2023 - S. 482 - Anticipatory Bail - Maintainability when Proclaimed Offender u/ss 84, 85 - Exceptional Circumstances - Petitioners declared proclaimed offenders - Proceedings u/ss 84, 85 BNSS during pendency of bail petitions - Held, anticipatory bail maintainable even after*
- d** *proclamation in exceptional cases - Consider circumstances of proclamation, nature of allegations, material - Not absolute bar - Guidelines from Supreme Court judgments followed. (Paras 9-18)*
- e** (B) *Bharatiya Nyaya Sanhita, 2023 - Ss. 115(2), 126(2), 109, 103(1), 352, 3(5) (IPC - 323, 341, 307, 302, 504, 34) - Anticipatory Bail - General and Omnibus Allegations - Counter Case - Allegations of causing death by assault - General roles, no specific attribution - Counter case by petitioners for attempt to murder on same occurrence - Clean antecedents - Held, anticipatory bail granted considering parity, lack of specifics, cross-cases. (Paras 1-22)*
- f** Facts:- *Petitioners sought anticipatory bail u/s 482 BNSS in case u/ss 115(2), 126(2), 109, 103(1), 352, 3(5) BNS for assault leading to death. Counter case filed by petitioners. Proclamation during bail pendency. High Court discussed maintainability, granted bail noting general allegations, cross-cases, no antecedents.*
- g** Law of relief:- *In exceptional cases Anticipatory bail maintainable even after proclamation .*
- h** Counsel:-  
*For Petitioners: Mr. Yashraj Bardhan, Advocate*  
*For Respondent(s): Mr. Upendra Kumar, APP*
- Cases Referred:-
1. *Lavesh v. State (NCT of Delhi): (2012) 8 SCC 730 (Para 10)*
  2. *Prem Shankar Prasad v. State of Bihar: (2021) SCC OnLine SC 955 (Para 11)*

3. *Abhishek Vs. State of Maharashtra and Ors.*: (2022) 8 SCC 282 (Para 12) a
4. *State of Haryana Vs. Dharamraj*: (2023) 17 SCC 510 (Para 13)
5. *Asha Dubey Vs. The State of Madhya Pradesh*: MANU/SCOR/124926/2024 (Para 14)
6. *Serious Fraud Investigation Office v. Aditya Sarda*: [2025 SCC OnLine SC 764] (Para 15) b
7. *Deepankar Vishwas Vs. State of Madhya Pradesh*: MANU/MP/0882/2025 (Para 17)
8. *Jagdish Das Vs. State of NCT of Delhi*: 2025 SCC OnLine Del 4553 (Para 18) c
9. *State of M.P. v. Pradeep Sharma*: (2014) 2 SCC 171 (Para 20)

### JUDGMENT

**Jitendra Kumar, J.:-**

1. The present petition has been filed on behalf of the petitioners, apprehending their arrest, in connection with Manjhi PS. Case No.-379 of 2024 dated 27.11.2024, registered for the offences punishable under Sections 115(2), 126(2), 109, 103(1), 352 and 3(5) of BNS, 2023. d

2. As per allegation, the petitioners and co-accused/Kedar Mahto caused injury by iron rod, knife and spade to the mother of the informant in the field, leading to her death at the hospital after ten days. e

3. I heard learned counsel for the petitioners and learned APP for the State. f

#### Submissions on behalf of the Petitioners.

4.. Learned counsel for the petitioners submits that the Petitioners are innocent and have falsely been implicated in this case. He further submits that the allegation as made against the petitioners is general and omnibus in nature. There is no specific allegation who caused what injury to the alleged victim. g

5. He further submits that the petitioners have got no criminal antecedents and have not moved this Court earlier either for anticipatory bail or regular one in the instant case. h

6. He further submits that the petitioners/accused side have lodged Manjhi P.S. Case No. 369 of 2024 on 17.11.2024, itself against the informant and his family members for the offences punishable under Sections 115(2), 126(2), 76, 109, 352, 351(2), 351(3) and 3(5) of

BNS, 2023, whereas the informant has lodged the present case as a counter blast in regard to the same occurrence after ten days.

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7. He also submits that process under Section 82, 83 Cr.PC, corresponding to Sections 84 and 85 B.N.S.S. respectively, have been taken by the Police during pendency of the anticipatory bail petition before the District Court as well as this Court. Hence, they could not be held to be avoiding warrants of arrest. They moved the courts of law for the anticipatory bail under the law of the land and, hence, process under Sections 82, 83 Cr.PC/Sections 84 and 85 B.N.S.S should not come in the way of grant of anticipatory bail.

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**Submissions on behalf of the State**

8. Learned APP for the State however, vehemently opposes the prayer of the Petitioners for anticipatory bail submitting that the present anticipatory bail petition is not maintainable, in view of the process taken under Sections 82 and 83 Cr.PC, corresponding to Sections 84 and 85 of BNSS, 2023 respectively, against the petitioners. The petitioners have been declared absconder and their property has been attached. He further submits that the allegation is serious in nature and corroborated by the Postmortem report, as per which the deceased has died due to shock and haemorrhage on account of the injury caused by hard and blunt substance.

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Section 438 Cr.PC/Section 482 B.N.S.S. and Sections 82 and 83 Cr.PC/Sections 84 and 85 B.N.S.S.

9. Before I proceed to consider the prayer of the Petitioners 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. Hon'ble Supreme Court has considered this question on several occasions:

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10. In *Lavesh v. State (NCT of Delhi)*, (2012) 8 SCC 730 the Hon'ble Supreme Court has held as follows:

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"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 82of the Code he is not entitled to the relief of anticipatory bail."

11. 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 82/83CrPC 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 anticipator

bail.....

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

12. In Abhishek Vs. State of Maharashtra and Ors., (2022) 8 SCC 282, 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....."

13. In State of Haryana Vs. Dharamraj, (2023) 17 SCC 510, the Hon'ble Supreme Court has held as follows:

- a "18. We may note that in *Lavesh 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 *Lavesh 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.
- b 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....."
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14. 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:

- e "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.
- f 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."
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- h

(Emphasis supplied)

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

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

16. Hence, it clearly emerges that the anticipatory bail petition of a Petitioner facing accusation is maintainable, even if the proceeding under Sections 82 and 83 Cr.PC/Sections 84 and 85 B.N.S.S, have been initiated against him. However, grant or rejection of anticipatory bail would depend upon the facts and circumstances of the case. The Court is required not only to see the circumstances under which the proceedings under Sections 82 and 83 Cr.PC/Sections 84 and 85 B.N.S.S. were taken, but, even the nature of the allegation and the material in support thereof is also required to be looked into. The Court is also required to consider the factum of the proceeding taken under Sections 82 and 83 Cr.PC/Sections 84 and 85 B.N.S.S. seriously and not casually, while considering the anticipatory bail petition of such accused. b c d

17. Similar view has been taken by Madhya Pradesh High Court in Deepankar Vishwas Vs. State of Madhya Pradesh, as reported in MANU/MP/0882/2025, holding as follows:

“In view of the above discussion and taking note of the legal aspects on the question and the judgments passed by the Hon’ble Apex Court, we are inclined to hold that in both the scenarios, where the proceedings under Section 82/83 and 299 of Cr.P.C. (84/85 and 335 of the BNSS) have been initiated against the accused and/or he has been declared proclaimed offender, the application for anticipatory bail would be maintainable. However, such consideration and grant of anticipatory bail to the accused would depend upon the gravity and seriousness of the offence involved therein. It is needless to mention here that such power should be exercised in a very cautious manner and in extreme and exceptional cases only in the interest of justice. ....” e f g

(Emphasis supplied) h

18. Delhi High Court has also taken similar view in Jagadish Das Vs. State of NCT of Delhi, as reported in 2025 SCC OnLine Del 4553, holding as follows:

“.....Keeping in view the law and judicial precedents, anticipatory bail shall not be granted to person, who is a proclaimed person under Section 82 Cr.P.C. except in exceptional

a circumstances. The present case does not form and exceptional or  
b extraordinary case where this discretionary power of the Court be  
c used.....”

#### Present Case

b 19. Coming to the case on hand, I find that in the case on hand,  
c there is case and counter case between the informant and the  
d petitioner/accused side. The case of the petitioner/accused was filed  
e for alleged offence of attempt to murder and other allied offence on  
f the same day of occurrence, whereas the informant of the present case  
g has lodged the case after ten days of the same occurrence. Though,  
h the victim, of the informant side, died in course of treatment, there is  
i no such casualty on the side of the petitioners/accused side.  
j However, as per the allegation, serious injury has been received on  
k the side of petitioners also including injury on head and the FIR has  
l been registered for attempt to murder, and allied sections of the BNS.

d 20. As per the written report of the petitioners' side, when the  
e informant, who is the family members of the petitioners, was going to  
f his field on 17.11.2024 at 11:00 A.M., he saw that Suraj Kumar, Ranjit  
g Kumar, Ramdahin Mahto, Umrawati Devi and Runi Devi were laying  
h water pipe on his strip of land and when he asked them how they  
i were laying such water pipe, they started assaulting him and he was  
j assaulted by spade on his head by Suraj Kumar with intent to kill him  
k causing fracture on his head. As per further allegation, Ranjit Kumar  
l assaulted the informant by sickle injuring his hand. In the meantime,  
m when the son of the informant came to save him, he was also attacked  
n by spade causing fracture in his head. His wife and daughters were  
o also assaulted by them causing fracture of the head of his daughters  
p and breaking the hand of his wife. It is also alleged that all the  
q accused are 'dabang' and they have made their life hell.

g 21. I further find that proceedings under Sections 82 and 83  
h Cr.PC/Sections 84 and 85, BNSS have been taken against the  
i petitioners during pendency of their anticipatory bail petition before  
j the District Court as well as this Court. Hence, the Petitioners could  
k not be held to be evading arrest.

h 22. Considering the case and counter case, injuries on both sides  
i and clean antecedents of the petitioners as well as lack of specific  
j allegation against any of them, this petition is allowed, directing the  
k petitioners above-named, to be enlarged on bail, in the event of their  
l arrest or surrender before the Court below within a period of eight  
m weeks from the date of receipt/production of a copy of this order, on

their furnishing bail bonds in the sum of Rs.10,000/- (Ten Thousand) each with two sureties of the like amount each to the satisfaction of learned concerned Court Below, in connection with Manjhi PS. Case No.-379 of 2024, subject to the conditions as laid down under Section 482(2) of the BNSS, 2023 and on the following conditions: a

(i) In case, it is brought to the notice of the court below that the petitioners have any criminal antecedents, learned court below shall cancel the bail bonds of the petitioners after hearing them and getting satisfied that the petitioners have concealed their criminal antecedents despite their knowledge of the same. b

(ii) In case, it is brought to the notice of the court below that statement regarding previous bail petition is wrong, learned court below shall cancel the bail bonds of the petitioners. c

**Result:-** Petition allowed. Anticipatory bail granted.

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