

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL MISCELLANEOUS No. 27467 of 2022**

Arising Out of PS. Case No.-12 Year-2021 Thana- BACHHWARA RAIL P.S. District-  
Begusarai

RAJESH KUMAR Son of Late Shivji Ray Resident of Village - Raghapur  
Paschami, Ward no.8, P.S.- Jurawanpur, Distt.- Vaishali.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

**Appearance :**

For the Petitioner : Mr. Siddharth Harsh, Advocate

For the Opposite Party : Ms. Indu Kumari Srivastava, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN  
SINGH**

ORAL ORDER

2 03-11-2022

This application for grant of anticipatory bail was filed on 10.05.2022 and came to be registered on 25.05.2022. It has been listed today under the heading 'For Orders' with the defects pointed out by the Stamp Reporter dated 20.05.2022.

The office note reads thus: -

*“Regarding Stamp Reporting Slip  
submitted for “Orders” before Hon’ble  
“S.J.” With “S.R.” defect Dated 20.05.2022 S.R.  
defect i.e.*

*(ANY CORRECTION IN PETITION BE  
CORRECTED VIA S.A.)*

*1. Original copy of vak, fee receipt,  
notice and aff is required. 2. CC of FIR and Imp  
order is required. 3. 2<sup>nd</sup> and 3<sup>rd</sup> set of petition is  
required. 4. u/s at para 1 be verified and corrected  
from FIR.”*



2. This is the third consecutive day when defective anticipatory bail applications only have been listed before this Bench with the office notes merely for obtaining orders for removal of defects. I take judicial notice of the fact that the only output in terms of disposal has been disposal of one anticipatory bail application [Cr. Misc. No. 32351 of 2022 (*Vijay Ram vs. The State of Bihar*) on 01.11.2022, which had become infructuous consequent upon petitioner's arrest during its pendency. Further, there is no clue as to why this anticipatory bail application and many such applications are being placed for removal of the defects before the Bench, more than five months after the defects were pointed out by the Stamp Reporter in May, 2022 itself.

3. At this juncture, it is pertinent to point out that certain instructions were issued on the administrative side of the High Court prescribing the procedure for *on-line* filing of the cases to meet the situation, consequent upon the onset of COVID-19 Pandemic and its adverse effects.

4. In the present case, the application has been filed *on-line*. However, under the procedure in vogue in this Court, the petitioner is also required to file a hard-copy of the *on-line* application. Non-filing of hard copy of the application is one of



the defects pointed out by the Stamp Reporter on 20.05.2022.

5. Further, for a considerable period of time, this Court had been taking up hearing of the cases through *on-line* video conference because of COVID-19 restrictions, apparently, under the exceptional circumstances. The physical functioning of the Patna High Court subsequently resumed with effect from 04.01.2021 for four days in a week and for every Friday through *on-line* video conference. However, with the onset of second wave of COVID-19 Pandemic and imposition of restrictions therefor, the court proceedings were resumed through *on-line* video conference. Thereafter, with restoration of normalcy, restrictions with regard to COVID-19 Pandemic were withdrawn and the physical functioning of the courts resumed with effect from 27.07.2021 with four days a week and through *on-line* video conference on every Friday. Subsequently, for physical functioning of the High Court, a Standard Operating Procedure (SoP) has been laid down and following instructions have been issued, effective from 21.02.2022: -

*STANDARD OPERATING PROCEDURE (SOP)  
FOR PHYSICAL FUNCTIONING OF THE COURTS  
(w.e.f. 21<sup>st</sup> February, 2022)*

*General Instructions*

- 1. The Courts shall function in the physical mode four days in a week, and one day in Virtual mode.**



2. Gate No.1 shall be kept open exclusively for entry and exit of Hon'ble Judges. Gate No. 3 shall be used for vehicular and pedestrian entry and exit of Registry Officials, Court staff, lawyers and other permitted persons. Gate No. 4 shall remain open for pedestrians only.

3. Entry in the Court premises will be allowed through Gate No. 3 and exit shall be facilitated through Gate No. 3A near Court Officer's residence.

4. The Vehicles will pass through the UVSS installed at Gate No. 3 and the pedestrians will pass through the cabin equipped with DFMD and baggage scanner cabin for their screening along with their belongings, if any.

5. Advocates, having e-pass for the day and self driving their vehicles, will be allowed to enter the Court Premises through Gate No. 2 along with their registered clerk subject to strict compliance of standard protocol and screening.

6. In order to avoid congregation, ensure observance of social distancing norms and ensure free-flow of vehicles at Gate No. 2, the learned advocates coming to Court in self driven vehicle will drop the occupants of the vehicle at the entry point for the screening and thereafter are expected to immediately, after screening, proceed for parking as per direction of the Traffic Constable's regulating entry and parking.

7. Entry to the A.G Office shall be opened with access for the Id. A.G. only.

8. All vehicles of Court staff, lawyers and other permitted persons shall be diverted to the parking area, after entry from Gate No.3.

9. Provision for mandatory thermal check and sanitization shall be made at the entry point into the Court premises Gate No.3. This shall be the only point for entry and exit into the Court premises for lawyers



*and other permitted persons. The thermal checking will be done by the personnel provided by the State Government through the office of the Civil Surgeon. The number of health workers manning the thermal check post will be subject to the number of footfall in the High Court Premises.*

*10. The Ld. arguing counsel/ assistant Lawyer/registered clerk/parties, who have been issued E-passes, shall be permitted to enter the Court premises through the designated gates, after subjecting themselves to the thermal scan and such other scanning devices as may be installed for detecting body temperature, infection status, etc. as also after verification of their ID Cards and Vaccination Certificate.*

*11. Persons displaying symptoms of flu, fever, cough etc. shall not be permitted entry inside the Court premises.*

*12. Wearing of Face Masks in the proper manner, frequent use of hand sanitizer and maintaining physical distancing norms is mandatory for all entrants into the High Court premises, including the Court rooms. Once inside the premises, nobody will be allowed to remove the Face Mask and it will be mandatory to wear the Mask till they remain in the High Court premises.*

*13. Entry into the Court premises, till further orders, of the Ld. Counsels/parties or other stakeholders, for hearing through fully physical mode will be through daily "E-passes".*

*14. E-passes shall be generated only for such of those cases which shall be listed for the day.*

*15. E-pass will be generated to the Learned Advocates who have to appear in the Court for hearing, from the website of Patna High Court by providing details of the case.*



16. E-Pass will be valid only for the particular day and time slot for which it is issued and entry in the High Court premises shall be allowed only on the basis of the E-Pass.

17. A team of ten Lawyers from each of the three Bar Associations shall also be there to ensure proper compliances with the SOPs.

18. A designated Court-staff shall be stationed near the entry point who shall note the name and mobile number of the concerned Advocate/litigant/Registered Clerk against the relevant item number(s) of the cause list.

19. Only one arguing counsel along with one assistant Lawyer and one registered clerk, per party, shall be allowed to enter inside the premises and Court-rooms, whose cases are listed for the day. Entry of the advocate clerks (limited to one advocate clerk per set of petitioners/ respondents/ lawyer) shall be permitted on the basis of their identification by the concerned advocate and display of their I-Cards.

20. Once entry is permitted to any arguing counsel/ assistant Lawyer/registered clerk, as aforesaid, for any such case listed for the day, no other person, for the same case and for the same party, shall be permitted to enter inside the Court premises.

21. On entering the Court premises, the Ld. arguing counsel/ assistant lawyer/registered clerk/parties shall proceed to the Court room where their case is listed and wait for their turn to enter respective Court rooms where the hearing of their respective cases is scheduled.

22. The lounge for Advocates in the Centenary (new) building shall remain open only for the time till the Courts are in session.

23. Seats in each Court room shall be limited to bare minimum, or the number may be specified, and entry



*in the Court shall be permitted to such advocates/party-in-person whose matter is called out for hearing and also to such advocates, whose item is immediate next, subject to availability of space. The remaining advocates shall wait in the Bar Office premises for their turn maintaining social distance however, there shall be no access to the court corridors from bar associations and all such existing doors shall remain locked.*

*24. It shall be incumbent upon the Advocates along with their respective registered clerks/Party-in-person to maintain minimum prescribed physical distancing norms between each other.*

*25. Litigants and parties concerned, who are represented by any Advocate, shall only be allowed to enter inside the Court premises where their personal appearance is required by virtue of Court order.*

*26. Special Pass shall be issued to the persons directed to appear/ litigants / parties concerned, on an application made by them or their Advocate along with the copy of the Court's order directing them to appear in person. Such application shall be made online prior to the date of hearing to the learned Registrar General. Party shall then produce the Pass along with valid ID proof at the entry gate.*

*27. The Advocates, Party-in-person and registered clerks shall move out of the High Court premises immediately after the hearing of their case is over.*

*28. In the lifts, entry of maximum three persons including the lift-man shall be allowed at one time.*

*29. Special Passes for fifteen (15) days will be issued to the office bearers of Association's in advance effective from the date of commencing physical functioning of the High Court. These passes shall be renewed from time to time by a common order of the*



*Registrar General.*

*30. There shall be strict adherence to Social Distancing norms and directions/ guidelines/ SOPs/ advisories issued by the Government of India and the Government of Bihar from time to time, in respect of the Covid-19 pandemic."*

6. I am under the impression that the said SoP is still operative on paper but most of its clauses are not being followed now, understandably because of the restoration of normalcy with the waning of the Pandemic situation. Two clauses of the said instructions i.e., Clause No. 1 & Clause No. 25 are being strictly adhered to. Clause 25 of the SoP is reproduced hereinbelow even at the cost of repetition as it affects the administration of justice inasmuch as it almost denies even the litigants to witness the Court proceedings of their own cases: -

*"25. Litigants and parties concerned, who are represented by any Advocate, shall only be allowed to enter inside the Court premises where their personal appearance is required by virtue of Court order."*

7. I am of the view that the right of public access to the court proceedings is an essential requirement of an open court proceedings, which cannot be dispensed with except in exceptional circumstances and unless restriction on access to court room is imminent and necessary, in the interest of justice





or public interest. A Court cannot have a general discretion to exclude the litigants or even the public to watch the proceedings unless otherwise provided in accordance with law in larger public interest or for any other genuine and valid purpose. Denial to a litigant of an easy access to the court proceedings creates opacity in the court proceedings, which is opposed to the open court proceeding principle, in the absence of any exceptional circumstance.

8. In my view, in the light of subsequent developments, Clause 25 of the SoP might either have served its purpose while dealing with COVID-19 restrictions or it may not be presently serving any useful purpose, which aspect requires reconsideration at appropriate level.

9. I also take notice of the fact that for some period, court proceedings of some of the Benches of this Court were being live-streamed, which had given the litigants and public an opportunity to watch the same. Live-streaming, however, had remained limited to only few of the Benches, whereas proceedings before rest of the Benches remained completely inaccessible to the litigants and general public. As on date, there is no SoP at place for live-streaming of all the court proceedings. As on date, there is no live streaming of any court



proceeding. The court proceedings of this High Court are thus completely shut for litigants and public and cannot be watched because of operation of Clause 25 of the SoP.

10. Similarly, by operation of Clause 1 of the SoP, the court proceedings in the Patna High Court are being held exclusively *on-line* through video conference on every Friday. Based on the experience, which I have gained while holding *on-line* courts on Fridays, I can state without any demur that such proceedings did not last for more than an hour, apparently, because the learned Advocates were found preferring to hearing of such cases in physical mode, which required a detailed hearing.

11. I am tentatively of the view that in the present situation, it is wastage of the judicial hours by adhering to Clause 1 of the SoP, issued nearly nine months back, to the effect that the Court shall function for four days only in physical mode and one day in virtual mode (virtual mode in my opinion is an incorrect substitute to the expression '*on-line* hearing of cases through video conference').

12. On the point of adherence to the requirements under SoP, by way of illustration, I consider it useful to refer to Clause 12 of the SoP, which requires wearing of face masks in



proper manner and frequent use of hand sanitizers. I can say, based on appearance of the lawyers and the staff present in the court room, when I am writing this order and also based on my personal knowledge that wearing of masks by anyone in the Court premises is an exception and certainly not the practice.

13. I am conscious of the fact that these are purely administrative matters of the High Court, which could have ordinarily been dealt with on the administrative side and should not have formed part of a judicial order, let alone an order being passed in the present case. I am, however, constrained to record my views in the present order since a polite request made by me to Hon'ble the Chief Justice to do away with *on-line* hearing of the cases on Friday has been out rightly declined sans any discussion in that regard.

14. The observations which have been made are merely views expressed by me in respect of functioning of the High Court in accordance with the SoP effective from 21.02.2022. The said SoP may be required to be revisited by Hon'ble the Chief Justice. There is no gainsaying that the decision of Hon'ble the Chief Justice in the matter of functioning of the High Court is paramount and final. However, in my view, said SoP, effective from 21.02.2022 issued by



Hon'ble the Chief Justice should either be followed strictly or the SoP may be revisited in view of the prevalent situation by Hon'ble the Chief Justice, keeping in mind larger interest of justice delivery system.

15. I also consider it apt to place, at this stage, on record the Bihar State Health Bulletin-COVID-19, dated 02.11.2022 available on the official website of the Health Department, Government of Bihar, which is as under: -

**HEALTH DEPARTMENT, GOVERNMENT OF BIHAR**  
**Bihar State Health Bulletin- COVID-19**  
**(Date: 02.11.2022)**

**1. COVID-19 Positive Cases Status**

	01.11.2022	Cumulative
Total Positive Cases	1	8,51,215
Recovered/ Discharged/Migrated	23	8,38,837
Deaths	0	12,302
Cause of Death	-	-
Active Cases	75	-

**2. COVID-19 Patient Management (Isolation Centres)**

	Total Bed Capacity	Total Beds Available	Occupied	Vacant
Dedicated COVID Hospital (DCH)	3,374	2,284	4	2,280
Dedicated COVID Healthcare Centre (DCHC)	8,130	6,713	0	6,713
COVID Care Centres (CCC)	11,362	8,432	0	8,432
Private Hospitals	5,528	5,131	6	5,125
		65		

**3. COVID-19 Testing Status**

RTPCR + TRUENAT tests conducted on 01.11.2022	27,048 +487 (27,535)
RAPID ANTIGEN tests conducted on 01.11.2022	38,434
Total tests conducted on 01.11.2022	65,969
Tests per million on 01.11.2022	573
Total tests done so far	9,16,87,384
Tests per million so far	7,96,435
Total tests done as per data uploaded on ICMR (Govt. of India) portal	9,13,35,712
Tests per million as per data uploaded on ICMR (Govt. of India) portal	7,93,380

4. Total No. of Active Containment Zones as on 02.11.2022:0  
5. Total No. of Containment Zones as on 02.11.2022:45,406  
6. Death%:1.445%  
7. Recovery Rate: 98.546%  
8. Active %: 0.009%

**NOTE:** All figures mentioned above are tentative, subject to change on receipt of additional information.



16. The abovementioned bulletin may be useful for Hon'ble the Chief Justice, if His Lordship considers it desirable to revisit the SoP, presently in force.

17. Coming back to the present matter, in view of the submissions made on behalf of the petitioner, the defect No. 4, as pointed out by the Stamp Reporter, is hereby ignored. Let remaining defects be removed within one week from today.

18. Let a report be submitted by the Registry as to why this anticipatory bail application, which was filed in May, 2022, has been placed for the first time under the heading 'For Orders' in November, 2022. The explanation must be placed through the learned Registrar General.

19. The learned Registrar General will also be required to find out as to which of the general instruction of the said SoP effective from 21.02.2022 have subsequently been modified by Hon'ble the Chief Justice and submit a report.

20. Put up this matter before appropriate Bench under the orders of Hon'ble the Chief Justice with the reports to be submitted by the Registry in terms of this Court's order.

21. Let this order be communicated to the learned Registrar General for him to place it before Hon'ble the Chief



Justice forthwith.

**(Chakradhari Sharan Singh, J)**

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