



IN THE COURT OF SESSIONS JUDGE, PATNA
CRIMINAL REVISION NO. 483 OF 2026

Abhijeet Kumar, S/o Amrendra Sharma,
R/o:- Ganga Bigha, Ward No. 5, P.S.- Obra, District- Aurangabad.

..... Revisionist / Accused

Versus,

The State of Bihar

..... Opposite Party.

Counsel for the Revisionist : Sri Madhukar Anand, Advocate.
Counsel for the State : Sri Rajesh Kumar, Public Prosecutor

ORDER

25.07.2026

1. The **petitioner, Abhijeet Kumar**, who is an accused in Shastri Nagar P.S. Case No. 238/2026, has approached this Court by way of the present criminal revision application, assailing the order dated 08.06.2026 passed in the aforesaid case whereby, the application filed by the Investigating Officer under Section 82 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was allowed, and the petitioner was proclaimed as an absconder.

2. The submissions of learned counsel for the petitioner and the learned Public Prosecutor for the State have been considered. The documents annexed to the petition, along with the trial court record, have also been perused.

SUBMISSIONS

3. The learned counsel for the petitioner has challenged the impugned order primarily on the ground that, for issuance of a proclamation under Section 82 Cr.P.C., the Court must record a specific finding that the accused is absconding or concealing himself to evade execution of the warrant. It is further submitted that the impugned order dated 08.06.2026 is devoid of merit and has been passed in an arbitrary manner, without adhering to due process of law.

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4. It is further submitted that the impugned order dated 08.06.2026 as well as the order dated 11.05.2026, were passed in haste, without adhering to the decisions of Hon'ble apex court and Hon'ble Patna High court. It is further submitted that the process of warrant and proclamation were issued regardless of the fact that no affidavited petition for their issuance was filed by the investigating officer.

5. It is further submitted that Hon'ble High Court, Patna in *Usha Mishra vs. The State of Bihar and Ors.*; 2007 (3) PLJR 748 has held "*Again this Court in the case of Krishna Murari Yadav, vs. State of Bihar since reported in MANU/BH/1053/2005: 2005 (3) PLJR 746 after analyzing the provisions of the Code, the Bihar Police Manual and the Civil Court Rules has clearly held that unaffidavited petition filed by I.O. in regard to seeking exercise of power by the court under Sections 73, 82 and 83 should not be acted upon...*".

6. It is further submitted that no satisfaction or **reason to belief** as envisaged under Section 84 of BNSS has been recorded in the impugned order before issuing proclamation, which ought to have been mandatorily recorded. It is further submitted that the details which were filled in Form No. 5 of Second Schedule of BNSS, while issuing proclamation were not recorded on the order-sheet.

7. It is further submitted that the Hon'ble Patna High Court in *Krishna Murari Yadav vs. State of Bihar*; 2005 (3) PLJR 746, has held that "*The expression 'Reason to believe' occurring in this section suggests that the Magistrate must be substantively satisfied that the person has absconded or has concealed themselves on the materials before him. Under Section 82 Cr.P.C. the Magistrate issuing proclamation must record his satisfaction that the accused has absconded or concealed himself, the Magistrate can grant permission for proclamation only on being fully satisfied and it should never been allowed in a routine manner. The order which has been passed by the Magistrate neither shows his satisfaction nor indicates that he had any reason to believe for passing such order. The order passed by the Magistrate is illegal also because on unaffidavited petition filed by the I.O. such order has been passed.*"

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8. It is further submitted that the Hon'ble Jharkhand High Court in Md. Rustum Alam @ Rustam vs The State of Jharkhand; 2020(2) J.L.J.R.712, has held that "*21. Thus, from the reading of Section 82 of the Code, it is clear that at first the Court has to have sufficient materials before him to reach to a conclusion to believe that a person, against whom warrant of arrest has been issued, is absconding or is concealing himself, and it is not possible for the authorities to execute the warrant of arrest. This satisfaction has to be recorded in the order while issuing processes under Section 82 of the Code. In this situation also from the records of the case the Court has derived the aforesaid satisfaction. Non-recording of subjective satisfaction in the order will make the Order bad and a non-speaking one. A non-speaking order involving a procedure, which attracts a penal offence (if the order is not complied with), cannot sustain in the eyes of law.*" "23. Form IV, which is part of Second Schedule of Code is the form in which proclamation is required to be issued. The said form provides for mentioning the place and date, for the person to appear in compliance of the order. This is a statutory form. This form is filled by the Office of the Court. Thus, the date and place, which is mentioned in the said form must also be reflected in the order-sheet. This will mean that the Court has fixed the place, time and the date and not the Bench Clerks or the Office Clerks, as it is the mandate of the law that the Court has to fix the place, time and the date of appearance. The Form IV, which is a statutory form, must be scrupulously followed and filled up as per the date, time, place fixed by the Court, which should be reflected in the order-sheet."

9. It is further submitted that the on 08.06.2026, when the order directing issuance of proclamation was passed the anticipatory bail application of the petitioner bearing A.B.P No. 1231 of 2026, was pending before the court of Learned Special Judge (Rape & POCSO Act), Patna, as such the petitioner could not have been termed as an absconder. At present petitioner's bail application is pending before Hon'ble High Court.

10. *Per contra*, the learned counsel for the State has opposed the revision application, contending that despite having knowledge of the case, the petitioner failed to appear before the Court, and therefore the petition deserves dismissal. It

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is further submitted that the petitioner had earlier sought anticipatory bail before the Court of Special Judge (Rape & POCSO Act), Patna, in ABP No.1231 of 2026, which was rejected by order dated 19.05.2026 and at present petitioner's applicaiton is pending before the Hon'ble High Court, Patna.

CONCLUSION

11. Upon consideration of the rival submissions and the materials on record, this Court finds as follows:

Firstly, an application filed by the Investigating Officer under Section 82 Cr.P.C. is required to be supported by an affidavit. This position has been affirmed by the Hon'ble Patna High Court in ***Usha Mishra v. State of Bihar***, relying upon ***Krishna Murari Yadav v. State of Bihar***, wherein, after an analysis of the provisions of the Cr.P.C., the Bihar Police Manual, and the Civil Court Rules, it was held that unaffidavited applications seeking exercise of powers under Sections 73, 82, and 83 Cr.P.C. ought not to be acted upon. In the present case, the application filed by the Investigating Officer is not supported by an affidavit, which vitiates the impugned order.

Secondly, the contention of the petitioner that he cannot be treated as absconding merits consideration. The petitioner had approached the Court of the learned Additional Sessions Judge, Special Judge (Rape & POCSO Act), Patna as such the petitioner could not have been termed as an absconder. At present petitioner's bail application is pending before Hon'ble High Court , which was subsequently rejected. The fact that the petitioner had availed a legal remedy indicates that he was not evading the process of law. This position finds support in *Usha Mishra v. State of Bihar* (Cr. W.J.C. No. 847 of 2005), particularly paragraph 18 thereof.

Thirdly, the Hon'ble Patna High Court in ***Krishna Murari Yadav v. State of Bihar*** has categorically held that before issuing a proclamation under Section 82 Cr.P.C., the Court must record its satisfaction, based on material on record, that the accused has absconded or is concealing himself, thereby fulfilling the requirement of "reason to believe." The Magistrate must explicitly record such satisfaction in the order. In the present case, the impugned order does not reflect any such independent satisfaction, rather, it merely reiterates the contents of the application

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filed under Section 82 Cr.P.C. The order thus appears to have been passed in a routine manner, without due application of mind. Furthermore, the absence of an affidavit in support of the application and the failure to establish that the petitioner was absconding or concealing himself render the order legally unsustainable.

12. In view of the foregoing discussion, this Court is of the considered view that the impugned order suffers from illegality and is liable to be set aside.

13. Accordingly, the present criminal revision application is **allowed**. The impugned order dated 08.06.2026 is hereby **set aside**, and the matter is remanded to the learned Court below for passing an order afresh in accordance with law.

(Dictated)

Sd/-
(Rupesh Deo)
Sessions Judge, Patna

Date of Order	25.07.2026
Date of Reserving Order	22.07.2026
Uploading Date	25.07.2026
Uploaded by	Vinod/-