

IN THE COURT OF SESSIONS JUDGE, PATNA
Criminal Revision No. 694 of 2025

Ramjeevan Rai@Ramjeevan Prasad, S/o Late Bishwanath Rai
R/o:- Indrapuri, Road No. 0, P.S.- Patliputra, District- Patna

..... Revisionist / Accused

Versus,

- 1. The State of Bihar**
- 2. Ashok Rai, S/o Sri Chhabila Rai**
R/o:- Mohalla- Gosai Tola, P.S.- Patliputra, District- Patna

..... Opposite Parties.

Counsel for the Revisionist	:- Sri Sashi Bhushan Prasad, Advocate.
Counsel for the State	:- Sri Rajesh Kumar P.P.
Counsel for Complainant	:- Sri Madhukar Anand, Advocate

ORDER

07.04.2026

1. The present criminal revision petition has been filed on behalf of the **petitioner, Ramjeevan Rai @ Ramjeevan Prasad**, accused in Complaint Case No. 4200(C)/2018, assailing order dated 21.05.2025, passed by learned ACJM-11, Patna, whereby proceedings under Section 82 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") were directed against him.
2. Upon consideration of the application seeking condonation of delay, and finding sufficient cause therein, the delay stands condoned in the interest of justice. Accordingly, the present revision petition has been entertained and adjudicated on merits.

Submissions

3. Learned counsel for the petitioner contends that the trial court erred both factually and legally in passing the impugned order, having failed to comply with statutory requirements and exercise proper judicial discretion. It is argued that proceedings under Section 82, Cr.P.C. were initiated without ensuring valid service of summons. Both bailable and non-bailable warrants of arrest were issued without adherence to mandatory procedural safeguards.

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No service report exists on record to establish that the petitioner had notice of the proceedings. The petitioner asserts that he was unaware of any summons or process issued by the court and is willing to appear before the trial court. In the absence of any material showing deliberate evasion, the issuance of warrants and initiation of proceedings under Section 82, Cr.P.C. are unsustainable in law. Also, the requirement that an application filed by the I.O. under Section 82 Cr.P.C. has to be mandatorily on affidavit, is lacking. On these grounds, the petitioner seeks that the impugned order dated 21.05.2025 be set aside.

4. Learned counsel for the State, while conceding certain procedural lapses, submits that the trial court resorted to Section 82, Cr.P.C. without ensuring valid service of summons, execution of bailable warrant, and subsequent non-bailable warrant. It is argued that accused person often attempt to delay proceedings by evading service despite knowledge of pending cases. In the present matter, as the petitioner failed to appear, the court was compelled to adopt coercive measures to secure his presence. The State submits that the petitioner should be directed to appear before the trial court within a fixed time frame.

Discussions

5. Upon hearing the parties and examining the trial court record, it is evident that cognizance was taken and summons were issued to secure the petitioner's presence for trial under Section 406 of Indian Penal Code and 138 of the Negotiable Instruments Act.
6. In the absence of proper service of summons, the trial court proceeded to issue a bailable warrant, followed by a non-bailable warrant of arrest, and thereafter initiated proceedings under Section 82, Cr.P.C.
7. The order sheets dated 03.10.2019, 23.10.2019, 23.11.2019, 02.03.2020, 24.01.2022, 24.02.2022/07.10.2023, 04.11.2023, 24.06.2025 themselves record that service of summons was not affected.
8. Thus, without any valid service report of summons or execution report of warrants, proceedings under Section 82, Cr.P.C. were initiated mechanically,

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without judicial application of mind, and in contravention of mandatory legal provisions.

9. It is a settled principle that when an accused wilfully avoids appearance, the court may first issue a bailable warrant, followed by a non-bailable warrant, and thereafter resort to proceedings under Section 82, Cr.P.C. to compel attendance. However, this procedure presupposes that proper service of summons and valid execution of warrants have been demonstrated on record.
10. The Hon'ble Supreme Court in **Inder Mohan Goswami and Another v. State of Uttarachal and Others**, (2007) 12 SCC 1, has laid down the following cardinal principle:

“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 is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.”

11. The Hon'ble Patna High Court in *Criminal Miscellaneous No. 629 of 2018, Sanjay Kumar v. The State of Bihar and Another*, while relying upon the Supreme Court's observation in *Inder Mohan Goswami*, has elaborated extensively on the requisite procedure (paragraphs 10 to 20 of the said judgment). In particular, paragraph 15 of the Hon'ble High Court's judgment sets forth the following principles:

“15. Thus, it is the duty of the court to enquire about the service of the summonses upon the accused. If the summonses are not served, it is the bounden duty of the

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court to see to it that they are served. If it is found that summonses are received by the accused persons and still they fail to appear before the court it would be a gross case of disobedience of the order of the court and in that case, it would be the duty of the Court of Magistrate to issue warrant, if necessary non-bailable to ensure the presence of the accused in the court. The Cr.P.C. discusses warrant of arrest from Section 70 onwards. The essential requirements for a warrant of arrest are that it must be in writing, must be signed by the presiding officer, must be sealed, must clearly identify the persons to be arrested, must specify the offence charged, must name the persons directed to arrest, must indicate the authority of the Magistrate and must mention the age of the persons sought to be arrested. It would be evident from Sub Section (2) of Section 70 of the Cr.P.C. that warrant does not lapse; it remains valid as long as the Magistrate does not explicitly revoke it.”.

12. Furthermore, the ratio laid by Hon'ble Patna High Court in **Usha Mishra versus State of Bihar** (Cr. W.J.C No. 847of 2005) that an application filed by the I.O. under Section 82 Cr.P.C. has to be mandatorily on affidavit, else shall not be acted upon has not been followed in the case at hand, as such an application being not on affidavit, the impugned order dated 21.05.2025 passed in Complaint Case No. 4200(C)/2018, by ACJM-11, Patna, suffers from the vice of illegality.

Conclusion

13. The learned trial court's own order sheets reflect that no valid service of summons was affected upon the petitioner. Under these circumstances, the immediate recourse to a non-bailable warrant of arrest and the consequent invocation of Section 82, Cr.P.C., without first ensuring proper service of summons and exhausting the remedy of a bailable warrant, constitutes a

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clear departure from the mandatory procedural safeguards designed to protect personal liberty. Also, the application of the investigating officer under Section 82 Cr.P.C. was not on affidavit, which tantamount to violation of the ratio laid by Hon'ble Patna High Court in *Usha Mishra versus State of Bihar*.

14. This Court is therefore of the considered view that the impugned order dated 21.05.2025 passed in Complaint Case No. 4200(C)/2018 by ACJM-11, Patna, is neither proper nor sustainable in law.
15. The Criminal Revision Petition is accordingly **allowed**. The impugned order dated 21.05.2025 passed by the learned trial court stands **set aside**.
16. The petitioner is directed to appear before the learned trial court within **fifteen days** from the date of receipt of a copy of this order by the trial court. In the event of such appearance within the stipulated period, the learned trial court shall treat the petitioner as having appeared pursuant to the issuance of summons and shall thereafter proceed with the matter in accordance with law.

(Dictated)

Sd/-
(Rupesh Deo)
Sessions Judge, Patna

Date of Judgment/Order	07.04.2026
Date of Reserving Judgment/Order	26.03.2026
Uploading Date	07.04.2026
Uploaded by	Vinod/-