

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.16411 of 2015

Arising Out of PS.Case No. -213 Year- 2014 Thana -JHAJHA District- JAMUI

- =====
1. Lutan Yadav Son of Late Nem Yadav
 2. Pawan Yadav @ Pawan Kumar Yadav Son of Lutan Yadav. Both resident of Village- Belatanr , P.S. - Jhajha, District- Jamui.
- Petitioners

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioners : Shri Bharat Lal, Advocate
For the State : Shri Anil Kumar Singh, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
ORAL ORDER

2 25-06-2015

Heard.

2. The petitioners have approached this Court under Section 438 Cr.P.C. for being admitted to anticipatory bail in connection with Jhajha P.S. Case No. 213 of 2014 under section 307 etc. of the Indian Penal Code. The sections of offences under which the above case was registered were all bailable except sections 379 and 307 of the Indian Penal Code.

3. The learned Sessions Judge, Jamui has observed in paragraph-6 of the rejection order dated 25.03.2015, passed in A.B.P. No. 236 of 2015 that the Investigating Officer had not produced the case diary. However, the injury reports of Champa Devi and Bini Kumari were attached with the petition and it appeared from the copies of the injury reports which were placed on the above noted bail petition that Champa Devi and Bini

Kumari both bore incised wounds on their person. However, the learned Sessions Judge has not mentioned as to what was the nature of the injury. Moreover, there is complete absence from the order of material facts which might have been collected by the Investigating Officer by questioning persons who were acquainted with the facts and circumstances of the case.

4. In *Meena Devi & Ors. Vs. State of Bihar* [1985 PLJR 596], the practice adopted by this Court of not hearing a petition under Section 438 Cr.P.C. directly filed before it was challenged before it by making submission that the jurisdiction of the Court was very well created by Section 438 Cr.P.C. and it was mala fide on the part of the Court to direct the accused seeking bail under Section 438 Cr.P.C. to approach the Sessions Judge first and in case of being refused the prayer, approach this Court thereafter. The Court speaking through Hon'ble Shri Justice P.S. Mishra was pointing out the reason as to why the Court had prescribed the practice of first approaching the Sessions Judge and in case of the prayer being refused by that Court, to approach this Court next. The Court was pointing out that the Court of Sessions and the Sessions Judge being the officer on spot it could be very easy for him to have the police records before him and he shall, while passing the order under Section 438 Cr.P.C. even of refusing



the prayer, is expected to put down the material facts in his order which were collected by the police during investigation. The Court was further pointing out that it could be very easy for the Court to appreciate the facts of the case by merely going through the rejection order passed by the learned Sessions Judge and as such, it was felt desirable that accused persons who were desirous of obtaining an order under Section 438 Cr.P.C. ought, first, approach the Court of Sessions.

5. It appears from the very rejection order that the case diary was not produced before the learned Sessions Judge, Jamui and that itself indicates that the learned Judge had directed the production of the same. It does not appear as to why without having the case diary and relevant materials before him which could have been sought to be produced before him, the learned Judge was proceeding to dispose of the petition by rejecting the prayer.

6. I am of the opinion that the direction issued by the Court in Meena Devi & Ors. (supra) was a direction issued on the judicial side of the Court and it is expected that each and every Judge who hears a petition under Section 438 Cr.P.C. or any other relevant provision under Chapter-XXXIII must abide by that direction and even if there is a direction on the administrative side



of the Court to dispose of the bail petition, he must not pay any heed to that administrative direction of the Court. Procedure established by law are those procedures also which have been invented by the Courts on their judicial sides and they have to be obeyed and complied by every Court as a binding precedent as regards the Courts subordinate to the High Court.

7. I as such, direct the learned Sessions Judge, Jamui to restore A.B.P. No. 236 of 2015 to its original number and file, seek the production of the case diary and other materials before him again and rehear the matter so that the relevant facts which could be collected by the police in the case diary are put down in his order in compliance with the direction of this Court on its judicial side in Meena Devi's (supra) case. If need be, the learned Sessions Judge may act under Section 349 Cr.P.C. and punish the erring police officer if he fails to produce the case diary on being required to produce it before him. It may be pertinent to point out to the learned Sessions Judge and as such, to the whole judiciary under the control of this Court that powers under Chapter-XXVI of the Code of Criminal Procedure are vested in the Courts so as to effectively administer justice as appears not only from the reading of that particular Chapter but also from different provisions contained therein and no Court should shirk in calling those

provisions in their aid for effectively administering justice, specially, when it relates to the personal liberties of a person.

8. With the above directions, the petition stands disposed of. Let the police not arrest the petitioners till the disposal of A.B.P. No. 236 of 2015 by the learned Sessions Judge, Jamui.

(Dharnidhar Jha, J.)

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