

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36154 of 2014

Arising Out of Complaint. Case No. -62 (C) Year- 2010 Thana -SHEKHPURA COMPLAINT
CASE District- SEKHPURA

- =====
1. Md. Arsad Ali @ Arshad Ali , son of late Md. Zakir
 2. Md.Afzal Ali @ Afzal Ali, son of Md. Arsad Ali
 3. Md. Imran Ali @ Imran Ali, son of Md. Arsad Ali

All residents of Village Kabirpura, P.S. Jairampur, District Sheikhpura

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Anis, son of late Md. Noor, resident of Village Kabirpura, P.S.
Jairampur, District Sheikhpura

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Syed. Rizwanul Haque, Advocate

For the State of Bihar : Mr. Iftekhar Mahmood, App

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

ORAL ORDER

2 20-02-2015

Heard.

There may not be any doubt in it that the preset
petition is not maintainable and, as such, it has to be dismissed.

However, I am reminded of a Division Bench
decision of this Court in the case of **Bishundeo Sahu Vs. State of
Bihar** in Cr. Misc. Nos. 1257 of 2010, 2875 of 2010 and 21131 of
2010 disposed of by a common judgment dated 20.1.2011. While



overruling the earlier decision of the Court in Anirudh Prasad @ Sadhu Yadav Vs. State of Bihar, this Court had also considered a situation which arises very often when an accused who was admitted to bail under Section 438 Cr.P.C. does not surrender in the court below to furnish a bond as per direction of the court concerned. This Court had in the part of the judgment which was authored by me had considered the provision of Sub-section (3) of Section 438 Cr.P.C. which directs that when an accused had been arrested after being admitted to anticipatory bail, he has to be released forthwith by the police Officer after getting a bond of the value and nature executed from the person and, likewise, if an accused surrenders before a Magistrate then also the same result has to follow.

In the present case, the petitioners had not surrendered in the light of order passed by the learned Additional Sessions Judge, Sheikhpura and warrant of arrest and process under Section 82 Cr.P.C. were issued against them.

It is true that the petitioners were admitted to anticipatory bail and their petition was not maintainable, but that was not the end of the matter.

If the petitioners shall surrender in the court below then the learned Magistrate, Sheikhpura, who is seized with

Complaint Case No. 62 (C) of 2010 shall follow the decision of this Court in the Case of **Bishundeo Sahu Vs. State of Bihar, reported in 2011(1) PLJR 731**, especially the observations of the Court in paragraph 39 of the judgment.

The petition is disposed of with the above observations.

(Dharnidhar Jha, J)

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