

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.3056 of 2015**

Arising Out of PS.Case No. -22 Year- 2013 Thana -MAJORGANJ District- SITAMARHI

1. Keshav Jha son of Shobhakant Jha

2. Surendra Rai S/o Nagendra Rai

Both are R/o vill. - Harpurkala, W. No. 5, P.S. Majorganj, Distt. - Sitamarhi

.... .... Petitioners

Versus

1. The State of Bihar

2. Bhikhari Singh Son of Late Rupa Singh R/o vill. - Harpurkala, W. No. 5, P.S. Majorganj, Distt. - Sitamarhi

.... .... Opposite Parties.

**Appearance :**

For the Petitioner/s : Mr. Alok Kumar Jha, Advocate

For the Opposite Party/s : Mr. Ram Anurag Singh, APP

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

ORAL JUDGMENT

**Date: 15-12-2015**

By way of the present application under Section 482 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”), the petitioners seek quashing of the order dated 04.08.2014 passed by the learned Chief Judicial Magistrate, Sitamarhi in Trial No. 1203 of 2013, corresponding to Majorganj P. S. Case No. 22 of 2013, whereby and whereunder non-bailable warrant of arrest has been issued against them.

2. It has been contended that the petitioners were granted anticipatory bail vide order dated 22.08.2013 passed in Cr. Misc. No. 15316 of 2013 by a co-ordinate Bench of this Court. On



completion of investigation, the police submitted charge-sheet against them, pursuant to which cognizance of the offence was taken and summonses were issued against the petitioners vide order dated 15.12.2015. It has further been contended that summonses issued to the petitioners were not served upon them and the learned Jurisdictional Magistrate without waiting for the service report issued non-bailable warrant of arrest against them vide impugned order dated 04.08.2014.

3. *Per contra*, learned counsel for the State has contended that the petitioners have been made accused in a case under Sections 302 and 201 read with 34 of the Indian Penal Code. They were granted anticipatory bail during investigation, but the same was conditional one. This Court in its aforesaid order dated 22.08.2013 has observed that if before completion of the investigation, viscera report is received containing this fact that there was some poisonous substance, then, in that event, petitioners must surrender before the concerned Court and seek regular bail. He has further contended that the record would show that the petitioners deliberately evaded appearance before the Court after submission of charge-sheet and issuance of summons, which compelled the Jurisdictional Magistrate to issue non-bailable warrant of arrest against them.

4. Having heard learned counsel for the parties and perused the record, I find that after submission of the charge-sheet, summonses were never served upon the petitioners. I further find that even without cancellation of bail of the petitioners, the Court below has issued non-bailable warrant of arrest against them.

5. In that view of the matter, the impugned order dated 04.08.2014 cannot be justified in law. Accordingly, it is set aside. The petitioners are directed to appear before the Court below on or before 4<sup>th</sup> January, 2016. In case, they appear by 4<sup>th</sup> January, 2016, the learned Magistrate shall pass appropriate orders in accordance with law, keeping in mind the observations made by this Court in its order dated 22.08.2013 passed in Cr. Misc. No. 15316 of 2013 after examining the material available on record including the case-diary. In case, they fail to appear by 4<sup>th</sup> January, 2016, the learned Magistrate shall take all coercive measures to ensure their arrest.

6. With the aforesaid observation, this application is disposed of.

**(Ashwani Kumar Singh, J.)**

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