

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.57138 of 2015

Arising Out of PS.Case No. -199 Year- 2015 Thana -NAWANGAR District- BUXAR

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Bhim Pandey, Son of Late Ram Nagad Pandey, Resident of Village- Chakki Pandey Dera, Police Station- Brahmpur, District- Buxar.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Parijat Saurav, Adv.

For the Opposite Party/s : Mr. Jharkhandi Upadhyay (App)

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

2 18-12-2015 Heard learned counsel for the petitioner and learned counsel for the State.

By way of the present application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.'), the petitioner seeks quashing of the part of the order dated 21.11.2015 passed by the learned 3rd Additional Sessions Judge, Buxar in B.P. No. 821 of 2015 arising out of Nawanagar (Sonebarsa O.P.) P.S.Case No. 199 of 2015 whereby, while granting the privilege of bail to the petitioner, a condition has been imposed that the petitioner shall not make any claim for release of the seized vehicle in question in future.

Mr. Parijat Saurav, learned counsel for the petitioner has contended that the petitioner was arrested along his vehicle



bearing Registration No. BR-44G-2771, which was allegedly carrying 1600 litres of Blue Kerosene Oil. On enquiry, it was disclosed by the petitioner that he was transporting Kerosene Oil in question on the instruction of one Kamlesh Yadav. Subsequently, he filed his bail application before the learned Chief Judicial Magistrate, Buxar, which was rejected on 29th October, 2015. Thereafter, he filed his application for bail before the court of Sessions Judge, Buxar, which was transferred to the court of learned 3rd Additional Sessions Judge, Buxar on 21.11.2015. The learned 3rd Additional Sessions Judge, Buxar after perusing the materials on record allowed the bail application of the petitioner vide order dated 21.11.2015. However, while allowing the bail application of the petitioner, the court below imposed an arbitrary and unreasonable condition that the petitioner shall swear an affidavit that he shall not make any claim for release of the seized vehicle and Kerosene Oil in question in future.

Learned counsel for the petitioner has contended that the petitioner is the owner of the said vehicle bearing Registration No. BR-44G-2771 and he cannot furnish an affidavit to the effect that he shall not claim any right over the vehicle in future as the vehicle is the only source of his livelihood.

Mr. Jharkhandi Upadhyay, learned counsel for the State has contended that there is no illegality in the order passed by the court below as the vehicle was found involved in transportation of Blue Kerosene Oil and apparently an offence under Section 7 of the E.C.Act was committed by the petitioner.

I have heard learned counsel for the parties and perused the record.

It is settled position of law that in exercise of discretion by the Court for grant of bail, stringent and onerous condition cannot be imposed. The condition imposed by the court below to the effect that the petitioner shall file an affidavit that he will not make any claim for release of the seized vehicle is certainly an onerous one. Such a condition is beyond the provisions prescribed under Section 437 Cr.P.C. The impugned condition for bail is also in teeth of Chapter XXXIV of the Cr.P.C., specially Sections 451, 452 and 457 Cr.P.C.

In that view of the matter, the part of the order by which the court below has directed the petitioner to swear an affidavit that he shall not make any claim for release of the seized vehicle and kerosene oil in question in future cannot be sustained. Accordingly, it is set aside. The court below is directed to release the petitioner on bail on furnishing bail bond of Rs.10,000/- (Rupees ten thousand) with two sureties of the like amount each

to the satisfaction of the learned Additional Sessions Judge III,
Buxar in connection with Nawanagar (Sonebarsa O.P.) P.S.Case
No. 199 of 2015.

With the aforesaid observations and directions, the
application stands allowed.

(Ashwani Kumar Singh, J)

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