

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.33864 of 2015

Arising Out of PS.Case No. -399 Year- 2013 Thana -BAGHA District-
WESTCHAMPARAN(BETTIAH)

=====

Shatrudhan Mishra @ Sanjay Mishra S/o - Late Baidhnath Mishra R/o
Village- Sukhawan , P.S. - Bagaha (Patkhaauli), District - West Champaran.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Radha Mohan Pathak

For the Opposite Party/s : Mr. Mukesh Kr.Singh(App)

=====

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

ORAL ORDER

02/ 31-08-2015

Heard learned counsels for the petitioner,

State and the informant.

The petitioner is apprehending his arrest in
a case registered for the offences punishable under Sections 279
and 304A of the Indian Penal Code. Subsequently, the charge-
sheet was submitted under Section 302 of the IPC.

The prosecution case is that the petitioner
while driving a loaded tractor dashed the son of the informant,
who succumbed to the injuries.

The petitioner was granted bail by learned
Additional Chief Judicial Magistrate, Bagaha, but on submission
of the final form under Section 302 of the IPC the cognizance

was taken under Section 302 of the IPC and thereafter warrant of arrest was issued.

Learned counsel for the informant submits that the petitioner deliberately dashed the son of the informant.

In view of this Court, since the petitioner was granted bail by learned ACJM during investigation and he executed bail bond in pursuance to that, hence, he was in deemed custody of the court

In the circumstances, the second anticipatory bail application was neither maintainable before the learned Sessions Judge nor is maintainable before this Court. Since in pursuance to bail granted during investigation the petitioner executed bail bond, hence, he is in deemed custody of the court and in such circumstances anticipatory bail application is not maintainable as has been held by a Division Bench of this Court in the case of Bishundeo Sahu Vs. The State of Bihar and others, 2011 (1) PLJR 731. Paragraph no. 19 reads as follows:-

“In case of non-bailable offences also, similar view can be taken, in case anticipatory bail was granted for a limited period till submission of the charge-sheet. Since the accused has

W
NO

already surrendered before the Court below for grant of anticipatory bail and has executed bail bond, as such at his instance another anticipatory bail application cannot be maintainable. He will have to surrender and pray for regular bail under Section 439 of the Code of Criminal Procedure. The Court concerned, instead of taking him into custody, considering the previous order of anticipatory bail passed in his favour and also that he has not misused the privilege or his conduct is such that despite submission of charge-sheet or order taking cognizance, he is capable of granting bail, will grant him bail. In case where the anticipatory bail granted for limited period has been misused, the concerned Court will have discretion, either to grant or refuse the bail. In case of non-bailable offence, anticipatory bail, if granted for limited period, the

Court concerned will pass order in similar manner as laid down in the case of **Mahendra Pd. Singh** (supra). In no case, second anticipatory bail application at the instance of such accused person is maintainable.”

It is well settled view as has been by the Apex Court in the case of Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others 2011(1) SCC 694 that once anticipatory bail has been granted, it is granted till conclusion of trial unless anticipatory bail is cancelled on finding fresh material or on the ground of misuse of privilege of bail. Paragraph no. 108 reads as follows:-

“The views expressed by this Court in all the abovereferred judgments have to be reviewed and once the anticipatory bail is granted then the protection should ordinarily be available till the end of the trial unless the interim protection by way of the grant of anticipatory bail is curtailed when the anticipatory bail granted by the court is cancelled by the

court on finding fresh material or circumstances or on the ground of abuse of the indulgence by the accused.”

Hence, the bail bonds of any accused can be cancelled in three eventualities i.e. (i) either there is suppression of material facts at the time of preference of earlier bail application or (ii) there is fresh material or (iii) there is case of misuse of privilege of bail.

There is nothing on record to suggest that the bail bond has already been cancelled. Even if bail bond has been cancelled in such a circumstance the petitioner can be denied regular bail by the learned court below only in a case of misuse of earlier bail.

With the discussion made above, this application is disposed of.

(Dinesh Kumar Singh, J)

DKS/-

U		T	
---	--	---	--