

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.33051 of 2015

Arising Out of PS.Case No. -300 Year- 2013 Thana -GOPALGANJ COMPLAINT CASE District-
GOPALGANJ

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1. Rintu Ram @ Rentu Ram son of Doma Ram
2. Arjun Ram Son of Doma Ram
3. Bidyawati devi wife of Rintu Ram@Rentu Ram All are Resident of
Village- Galimpur, P.s Bishmabharpur, District Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar
2. laldhar Ram son of late Anmol Ram R/o Village Galimpur,,P.s
Bishambharpur, District Gopalganj.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Naresh Dikshit

For the Opposite Party/s : Mr. Abhay Kr. Roy(App)

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

2 11-08-2015

Heard learned counsels for the petitioners and
the State.

The petitioners are apprehending their arrest in
a case registered for the offences punishable under sections
366A/34 of the Indian Penal Code.

Accusation is of kidnapping the minor daughter
of the informant.

It is submitted by the learned counsel for the
petitioners that anticipatory bail was granted to the petitioners by
learned Sessions Judge by an order dated 05.10.2012 vide A.B.P.
NO. 355 of 2012 on the ground that the victim being major, in 164



Cr.P.C. statement stated that she of her own married with Mahesh Ram. On conclusion of investigation police submitted final form finding the accusation false and the same was accepted but subsequently the matter proceeded on protest cum complaint and process was issued after cognizance being taken under section 366/34 I.P.C. Then the petitioner again preferred anticipatory bail before the learned Sessions Judge which was rejected vide order dated 15.06.2015 vide A.B.P. No. 960 of 2015 considering the seriousness of accusation. Hence the present criminal miscellaneous application with prayer for anticipatory bail.

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

“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 charge sheet. Since the accused has 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.”

The learned C.J.M, after taking cognizance on protest cum-complaint petition ought to have considered this fact that the petitioners are on anticipatory bail in the case in question.



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

“The view expressed by this court in all the above referred 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”

It is settled law that bail bond can be cancelled if the bail has been obtained by suppressing the material facts, on finding fresh materials or on the ground of misuse of bail.

There is nothing on record to suggest that warrant of arrest has been issued and the bail bond has been cancelled. However, even if the bail bonds of the petitioners has been cancelled and warrant has been issued, the same can be challenged in appropriate proceeding the application for

anticipatory bail is not maintainable since the petitioners had been in the deemed custody of the court, but in such a situation regular bail can be denied only in case of misuse of the privilege of earlier bail.

With the aforesaid observations the application is disposed of.

(Dinesh Kumar Singh, J)

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