

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.36327 of 2015

Arising Out of PS.Case No. -137 Year- 2010 Thana -SUGAULI District-
EASTCHAMPARAN(MOTIHARI)

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1. Atul Kumar s/o Arun Barnwal
2. Arun Prasad Barnwal @ Arun Barnwal @ Arun Kumar s/o Late
Jagarnath Prasad r/o Sugauli Bazar P.S. Sugauli Dist- E. Champaran.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dhannjay Kumar No 2, Advocate

For the Opposite Party/s : Mr. Ashok Kumar Singh-1(App)

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

ORAL ORDER

2 08-09-2015

Heard learned counsel for the petitioners and the
State.

Petitioners are apprehending arrest in a case
registered for the offences punishable under Section 435
of the Indian Penal Code.

The prosecution case is putting the house
(Hutment) of informant on fire.

It is submitted by learned counsel for petitioners
that learned C.J.M., East Champaran, Motihari granted
bail to the petitioners vide order dated 18.10.2010 and
consequently they furnished bail bonds. On conclusion of
the investigation Final Form (charge-sheet) was submitted
under Section 436 of the Indian Penal Code and
consequently cognizance was also taken under Section

436 of the Indian Penal Code. Hence the petitioners preferred application for anticipatory bail before learned Sessions Judge which was rejected as not maintainable. Hence the present application.

In view of this Court, once the petitioners were granted bail by learned C.J.M. and they executed their bail bonds, they are in the deemed custody of the court and in such circumstances the anticipatory bail application was neither maintainable before learned Sessions Judge nor before this Court as has been held by a Division Bench of this Court in the case of **Bishundeo Sahu Vrs. The State of Bihar and Others, 2011 (1)**

P.L.J.R. 731, paragraph no.-19 reads as follows:-

“In case of non-bailable offence 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 already surrendered before the court below for grant of anticipatory bail and has executed bail bonds, 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 Prasad Singh (Supra). In no case, second anticipatory bail application at the instance of such accused persons is maintainable.”

It is also well settled view as has been held by the Apex Court in case of **Siddharam Satlingappa Mhetre Vrs. Sate of Maharashtra and Others** that once the bail has been granted it is granted till conclusion of the trial unless the bail is cancelled on filing fresh material or on ground of misuse of privilege of bail. Paragraph No. 108 reads as follows:-

“The views 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.”

Hence, the bail bonds 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 bonds of petitioners have been cancelled or the

warrant has been issued. Even if the bail bonds have been cancelled, in such a circumstance petitioners can be denied regular bail by the learned court below only in case of misuse of earlier bail.

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

(Dinesh Kumar Singh, J.)

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