

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43262 of 2015

Arising Out of PS.Case No. -376 Year- 2002 Thana -SIWAN COMPLAINT CASE District-
SIWAN

- =====
1. Harfom Mishra
 2. Hare Krishna Mishra
 3. Hare Shyam Mishra
 4. Basudeo Mishra @ Basu Mishra

All sons of Late Bechu Mishra, residents of village- Mishra Ke Gauri, P.S.-
Darauli, District- Siwan

.... Petitioner/s

Versus

1. The State of Bihar.
2. Yogendra Mishra son of Late Raghunath Mishra, resident of village- Mishra Ke
Gauri, P.S Darauli District- Siwan

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Mishra, Advocate
For the Opposite Party/s : Mr. Radha Randhir Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 08-08-2016

The present application under Section 482 of the Code of Criminal Procedure (for short "CrPC) has been filed for quashing of the order dated 17.8.2015 passed by learned Judicial Magistrate, 1st Class, Siwan in Complaint Case No.376 of 2002 corresponding to Tr. No.36 of 2015 whereby he has cancelled the bail bonds of the petitioners and issued non-bailable warrant of arrest against them.

2. It is submitted by the learned counsel for the petitioners that in the aforesaid complaint case, the learned Magistrate had directed the petitioners to appear in person on 17.8.2015 for framing of charges. Unfortunately, one of the full brothers of the petitioners, namely, Onkar Mishra died on 6th August, 2015 and his *Saradhkarma*



was fixed on 17th August, 2015. Due to the aforesaid unavoidable and compelling reason, the petitioners could not appear in person on 17th August, 2015, as directed by the court. However, an application under Section 317 of the CrPC was filed before the court of Magistrate in this regard and a prayer was made to dispense with their personal attendance and allow them to be represented through lawyer. The Magistrate disallowed the prayer of the petitioners and cancelled their bail bonds on 17.8.2015. The aforesaid order dated 17.8.2015 is under challenge in the present application.

3. It is submitted by learned counsel for the petitioners that the application under Section 317 CrPC was filed before the court of Magistrate under a very compelling circumstance, as one of the brothers of the petitioners had died and certain rituals were to be performed on the twelfth day of his death, which fell on 17.8.2015. He has submitted that the petitioners are law abiding citizens and have never defaulted in their appearance before the court. He has further submitted that the learned Magistrate without appreciating the application of the petitioners in correct perspective, arbitrarily cancelled their bail bonds only because on that date the case was fixed for framing of charges.

4. Learned counsel for the State does not seriously oppose the application filed on behalf of the petitioners. However, he submits that in case the order passed by the Magistrate is set aside, the

petitioners should be directed to be present before the court within a reasonable period of time.

5. In reply, learned counsel for the petitioners submits that the petitioners would certainly appear before the court on 19th August, 2016.

6. Regard being had to the facts of the case and submissions made by the learned counsel for the parties, the impugned order dated 17.8.2015 passed by the learned Judicial Magistrate, 1st Class, Siwan in Complaint Case No.376 of 2002 corresponding to Tr. No.36 of 2015 is set aside.

7. The petitioners are directed to appear before the Magistrate concerned on or before 19th August, 2016 for framing of the charges. In case, they fail to appear by 19th August, 2016 the Jurisdictional Magistrate would be at liberty to cancel their bail bonds and take coercive action against them to secure their attendance.

8. With these observations and directions, the application is allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	