

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46242 of 2015

Arising Out of PS.Case No. -318 Year- 2014 Thana –BUDDHA COLONY District- PATNA

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Mithilesh Prasad @ Mithalesh Prasad, Son of Late Rameshwar Sao Resident of
Pahalwanghat, Dujara, P.S. Budha Colony, Town & District - Patna

.... Petitioner/s

Versus

1. The State of Bihar.
2. Mukesh Chand Kuar S/o Late Brahmanand Kuar Resident of Kuar Wajitpur,
P.S. Patepur, District - Vaishali

.... Opposite Party/s

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Appearance :

For the Petitioner/s :

For the Opposite Party/s :

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 14-06-2016

Heard learned counsel for the parties.

The present application, under Section 482 of the Code of Criminal Procedure, 1973, has been filed against the order dated 08.12.2014 passed by the learned Judicial Magistrate, 1st Class, Patna by which the prayer of the petitioner for release of two generator sets in connection with Buddha Colony P.S.Case No. 318 of 2014 corresponding to G.R. No. 7013 of 2014, has been rejected.

Learned counsel for the petitioner submits that as per the F.I.R. itself, the petitioner was the owner of the generator sets and thus, the court below ought to have released the same in his favour, subject to whatever conditions which may have been imposed. It is further submitted that the said generators are assembled ones and thus,

the petitioner may not have any paper to show that he has purchased the said generator sets.

Learned A.P.P. opposes the prayer and submits that as per the order impugned of the court below, the reason given is that the petitioner was not able to produce any material to satisfy the court that the generator sets belonged to him, which cannot be faulted. It is submitted that the petitioner is at least required to produce some convincing evidence so as to enable the court to come to a conclusion, at least tentatively or *prima facie*, to indicate that the generator sets belong to the petitioner so as to justify any release as the court below itself is supposed to act in accordance with law based on admissible materials.

Considering the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is not inclined to interfere in the matter for the present. Accordingly, the application stands disposed off.

However, the petitioner shall be at liberty to file a fresh petition before the court below seeking release of the generator sets seized in connection with the said case, upon producing before the court below materials to satisfy it with regard to ownership. If such an application is filed, the court below shall consider the same in accordance with law and pass appropriate order without being

prejudiced either by this order or the earlier order passed by the court
below.

(Ahsanuddin Amanullah, J)

Sujit/Ravi

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