

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.54833 of 2015

Arising Out of PS.Case No. -34 Year- 2015 Thana -SANJHAULI District- SASARAM (ROHTAS)

Mahendra Prasad son of Hiralal Sah, resident of village- Sanjhauli, P.S.- Sanjhauli,
District- Rohtas. At present residing at village & P.S.- Nokha, District- Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Shri Dinesh Prasad Singh, District Manager, State Food Corporation, Sasaram,
Rohtas.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ram Chandra Singh, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP
For the B.S.F.C. : Mr. A.N. Rai, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 13-05-2016

By way of the present application preferred under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.'), the petitioner seeks quashing of the order dated 10.10.2015 passed by the 1st Additional Sessions Judge, Rohtas at Sasaram in Cr. Misc. No.5 of 2015 by which he has dismissed the petition of the petitioner for extending the period of provisional bail granted to the petitioner in connection with Sanjhauli P.S. Case No.34 of 2015 whereby the 1st Additional Sessions Judge, Rohtas at Sasaram has observed that in the event of arrest or surrender in the court below the petitioner shall be granted provisional bail till 10th August, 2015 on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each. Thereafter, the matter was again taken up on 3rd September,



2015 on which date the learned 1st Additional Sessions Judge, Rohtas at Sasaram, confirmed the provisional bail granted to the petitioner Mahendra Prasad. Subsequently, an application was filed by the petitioner contending therein that though his prayer for grant of pre-arrest bail was provisionally allowed initially till 10th August, 2015 and was later on confirmed by the court, he could not appear before the jurisdictional Magistrate for furnishing bail bond and, therefore, he be allowed to furnish bail bond to the satisfaction of the learned Magistrate. The learned 1st Additional Sessions Judge, Rohtas at Sasaram, has rejected the said prayer vide order dated 10.10.2015.

2. Challenging the aforesaid order dated 10.10.2015, learned counsel for the petitioner has submitted that since the petitioner had fallen ill, he could not appear before the court earlier to furnish bail bond in terms of the order passed by the learned 1st Additional Sessions Judge, Rohtas at Sasaram. However, since he has recovered, he is ready to furnish sureties to the satisfaction of the learned Magistrate, but the petitioner has reasonable apprehension that in case he surrenders, he may be taken into custody.

3. I have heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the State Food Corporation.

4. In my view, since the petitioner has already been granted

pre-arrest bail in terms of Section 438 of the Cr.P.C. by the learned Sessions Judge and the police have yet not arrested him, there is no reason for him to apprehend that in case he surrenders before the court to furnish bail bond, he may be taken into custody.

5. Section 438 of the Cr.P.C. gives discretion to the court of sessions or to the High Court to grant bail to a person apprehending arrest.

“438. Direction for grant of bail to person apprehending arrest.- (1) When any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

- (i) the nature and gravity of the accusation;*
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment or conviction by a Court in respect of any cognizable offence;*
- (iii) the possibility of the applicant to flee from justice; and*
- (iv) where the accusation has been made with the object of injuring or humiliating the*

applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Sessions, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer-in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(1A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the

light of the facts of the particular case, as it may thinks fit, including—

(i)a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii)a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii)a condition that the person shall not leave India without the previous permission of the Court;

(iv)such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).”

6. Section 438 of the Cr.P.C. does not mention anything about the duration to which a direction for release on bail in the event of arrest can be granted. The order granting anticipatory bail is a direction specifically to release the accused on bail in the event of his arrest.

7. In case the petitioner surrenders before the court to furnish bail bond pursuant to the earlier order passed by the learned 1st Additional Sessions Judge, Rohtas at Sasaram, he shall pass appropriate order taking into consideration the law laid down by the Supreme Court in *Siddharam Satlingappa Mhetre vs. State of Maharashtra & Others* reported in (2011) 1 SCC 694 ignoring the impugned order dated 10.10.2015 passed by the learned 1st Additional Sessions Judge, Rohtas at Sasaram in Cr. Misc. No. 5 of 2015.

8. With the aforesaid observations and directions, the application is disposed of.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	