

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22717 of 2016

Arising Out of PS.Case No. -92 Year- 2015 Thana -KASIMBAZAR District- MUNGER

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Mukund Bihari @ Mukund Bihari Gupta, son of late Devendra Prasad

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Ranjan, Advocate

For the Opposite Party/s : Mr. R.B.Roy Raman (App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

2 20-05-2016

Heard learned counsels for the petitioner and the State.

The petitioner is apprehending arrest in a case registered for the offences punishable under Sections 3 and 7 of the Essential Commodities Act.

The prosecution case is that from the shop of the petitioner seven domestic and commercial empty gas cylinders with refilling equipments were seized.

It is submitted by learned counsel for the petitioner that the petitioner used to run domestic gas over repair shop, hence the customers kept empty gas cylinders at the shop of the petitioner. This is not the case of the prosecution that domestic or commercial gas cylinders were in use or any refilling was being done, at the time of raid.

It appears from the impugned order that the learned



Sessions Judge, has held the anticipatory bail application of the petitioner as not maintainable on the ground that the police issued notice to the petitioner under Section 41 A(1) of the Cr. P.C. and the petitioner complied with the terms of the 'Notice' under Section 41A(2) of the Cr. P.C. Hence, it was treated as police bail by the learned Sessions Judge.

This Court feels inclined to elaborate the legislative mandate under Section 41 A of the Cr. P.C. Section 41 of the Cr. P.C. authorizes the police officer to arrest any person without an order from the magistrate or without warrant of arrest, under certain conditions incorporated under Section 41 (1) (a) to (i) of the Code.

In order to check the misuse of power of arrest by the police in exercise of jurisdiction under Section 41 of the Code, the legislature brought in existence Section 41A.

Section 41A reads as follows:-

"[41-A. Notice of appearance before police officer. – (1) The police officer may, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been

made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offences, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

3. Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officers is of the opinion that he ought to be arrested.

4. Where such person, at any time, fails to comply with the terms of the notice, it shall be lawful for the police officer to arrest him for the offence mentioned in the notice, subject to such orders as may have been passed in this behalf by a competent court."

Section 41A stipulates that the Police officer shall in all cases, where the arrest of a person is not required under sub-

section (1) of Section 41, may issue a 'Notice' to appear before him at specified place against whom, reasonable complaint has been made or credible information has been received or reasonable suspicion exists that he has committed a cognizable offence.

Sub section (2) of Section 41A stipulates that where such Notice is issued to person, he shall comply with the terms of 'Notice'.

Sub-section (3) of 41A, suggests that where such person complies with the notice or continues to comply with the Notice, he shall not be arrested unless some reasons are recorded by the Police officer that the person ought to be arrested.

Sub Section (4) of 41A further stipulates that, where such person at any time fails to comply with the terms of the 'Notice' or is unwilling to identify himself, the Police officer may arrest him for the offences mentioned in the 'Notice', subject to any order passed by a competent court.

Hence, the provision under Section 41A clearly stipulates that the Police officer exercises the jurisdiction where the arrest is not required. But at the same time, the Police officer is not denude with the power to arrest subsequently, under sub Sections (3) and (4) of Section 41A.

Hence, issuance of Notice under Section 41A(1) or



compliance of the terms of the Notice by the person concerned under Section 41A(2) cannot be treated as Police bail. Police bail is always a custody bail. The concerned person till the compliance of Notice under Section 41A(2) is not generally taken into custody by the police as is the case of the present petitioner who simply complied with the terms of the Notice.

The provisions of police bail during investigation is stipulated under Section 169 of the Cr.P.C. which reads as follows:-

"169. Release of accused when evidence deficient. --*If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient, evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial."*

The above provision clearly stipulates the power of police to

release the accused from custody, when evidence is deficient, before forwarding the accused to the Magistrate.

The other provision of police bail during investigation, enquiry and trial is stipulated under Section 437(1) and (2) of the Cr. P.C, which reads as follows:-

"437- When bail may be taken in case of non-bailable offence.-

(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but –

(i).....

(ii)

437(2)-) If it appears to such officer or Court at any stage of the investigation, inquiry or trial as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient



grounds for further inquiry into his guilt,[the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail], or, at the discretion of such officer or Court on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1) the Court may impose any condition which the Court considers necessary—

(a) :-...

(b) :-.....

(c):-

(4):-.....

(5):-.....

(6):-.

(7):-.

The above provision stipulates that the Police officer or the Court at any stage of investigation, enquiry or trial, as the case may be, release the accused on bail, if it appears that there is no reasonable ground for believing that the accused has committed a non-bailable offence, but, there are sufficient grounds for further enquiry into the guilt.

The word such officer in Sub section (2) of Section 437 suggests the Officer-in-charge of a Police Station as stipulated under Section 437(1) of the Cr.P.C.

In view of the above discussion it is apparent that *sine qua non* for release of any person on police bail is that the person is in custody on the date of release.

Since, in the present case, admittedly the petitioner was never taken into custody and merely because he complied with the terms of notice issued under section 41A(2) of the Cr.P.C. it cannot be treated that he was on police bail, hence, this anticipatory bail is maintainable.

Considering the fact that empty domestic and commercial gas cylinders were recovered but petitioner was not found using or refilling, coupled with the statement made in paragraph 3 of the petition that the petitioner is having no criminal antecedent, let the petitioner be released in the event of his arrest or surrender before

the learned court below, within a period of 12 weeks from today, on furnishing bail bond of Rs. 10,000/-(Ten thousand) with two sureties of the like amount each to the satisfaction of the learned SDJM, Munger, in connection with Kaimur Bazar P.S. Case No. 92/2015, subject to the conditions as laid down under Section 438(2) of the Cr. P.C.

(Dinesh Kumar Singh, J)

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