

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32230 of 2015

Arising Out of PS.Case No. -109 Year- 2013 Thana -SIMRI District- BUXAR

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Rajendra Kunwar son of Late Paras Kunwar, resident of village- Benilal Ka Dera,
Rajapur, Police Station- Simri in the District of Buxar.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Akhileshwar Prasad Singh, Sr. Advocate

: Mr. Bimal Kumar No.2, Advocate

For the Opposite Party/s : Mrs. Indu Bala Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 16-02-2016

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 20.5.2015 passed by the learned Additional Sessions Judge-VI, Buxar in Sessions Trial No.319 of 2013 arising out of Simri P.S. Case No.109 of 2013 by which the bail bond of the petitioner has been cancelled on the ground of the petitioner not being present in the court on the date of framing of charge.

2. It has been contended by Mr. Akhileshwar Prasad Singh, learned senior counsel for the petitioner, that the application for discharge filed before the trial court on behalf of the petitioner under section 227 of the Cr.P.C was rejected vide order dated 20.2.2015 and the said order was challenged before this Court under section 482



of the Cr.P.C. vide Cr. Misc. No.11013 of 2015 and in the meantime the trial court had fixed 20th May, 2015 as the date for framing of charge without awaiting for the result of the aforesaid Cr. Misc. No.11013 of 2015. He has further contended that an application under section 317 of the Cr.P.C. was filed on behalf of the petitioner on 20th May, 2015 for dispensing with the personal attendance of the petitioner, but the trial court dismissed the same and cancelled the bail bond of the petitioner on the ground that on the date of framing of charge the petitioner was absent. He submits that the impugned order passed by the court below is bad in law and hence, the same deserves to be set aside.

3. On the other hand, learned counsel for the State has contended that the petitioner is a named accused in the case registered, *inter alia*, under section 302 of the Indian Penal Code. On completion of investigation, the police found allegations made in the FIR to be true and submitted charge-sheet against him pursuant to which the Jurisdictional Magistrate took cognizance of the offence and after following the procedure prescribed under section 207 of the Cr.P.C. committed the case to the court of sessions for trial. At the stage of framing of charge an application under section 227 of the Cr.P.C. was filed on behalf of the petitioner which was dismissed by the trial court vide order dated 20.2.2015. The said order dated 20.2.2015 was

neither set aside nor stayed by any superior court and the trial court had fixed 20.5.2015 as the date for framing of charge and had directed the petitioner to be physically present in the court on the said date. Since the petitioner failed to appear before the trial court on 20th May, 2015, the trial court rightly cancelled his bail bond.

4. I have heard respective counsel for the parties and perused the record. I find force in the submissions made by the learned counsel for the State.

5. Admittedly, 20th May, 2015 was the date fixed for framing of charge by the trial court and the petitioner, who was on bail, was directed to be physically present on that date in the court. Simply because an application under section 317 of the Cr.P.C. was filed on behalf of the petitioner on that date, it cannot be held that the court exceeded in its jurisdiction in cancelling bail bond of the petitioner specially when the counsel for the petitioner failed to appear before the court to press the application. It is well settled that when the trial of the case gets delayed on account of non-appearance of the accused on bail, his bail may be cancelled, when the petitioner was directed to be physically present in the court for framing of charge on 20th May, 2015, he ought to have appeared before the court physically. If, for any compelling reason, his personal appearance was to be dispensed with, he ought to have been represented through

lawyer. It would be evident from the impugned order that despite repeated calls made by the court, the lawyer representing the petitioner failed to appear to press the application filed under section 317 of the Cr.P.C on 20th May, 2015. Under such circumstance, the court has rightly dismissed the petition filed under section 317 of the Cr.P.C and cancelled the bail bond of the petitioner.

6. In that view of the matter, I find no merit in the present application. Accordingly, it is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

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