

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.26146 of 2016

Arising Out of PS.Case No. -5 Year- 2000 Thana -C.B.I CASE District- PATNA

1. Kanchan Kumar, S/o- Late Shatrughan Prasad Kastwar, Resident of C-12 Cariton Estate-1, DLF City Phase- Sushant Lok, District- Gurgaon-122009 (Haryana).

.... Petitioner/s

Versus

1. The State of Bihar through the Department of Vigilance, Government of Bihar, Patna.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Jitendra Singh, Sr. Advocate
Mr. Subhash Chandra Bose, Advocate
Mr. Sajal Kumar Sinha & Yash Singh
For the Opposite Party/s : Mr. Rama Kant Sharma, L.O.I/C Vigilance

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 29-07-2016

Heard both sides.

2. The petitioner has filed this petition for quashing the order dated 21.05.2016 passed by the learned Special Judge, Vigilance, 1st, Patna, in Special Case No. 09/2000 by which the learned Special Judge rejected the petition of the petitioner filed under Section 317 of the Cr. P.C. and also cancelled the bail and bail bonds of the petitioner and the office is directed to issue nonailable warrant of arrest against the petitioner fixing the date as 08.06.2016.

3. Sri Jitendra Singh, the learned senior counsel for the petitioner submitted that once the petitioner filed a petition under



Section 317 of the Cr. P. C., firstly the representation of the petitioner has to be rejected and direction be issued to the petitioner to be present on the next date and on the same date bail bonds of the petitioner should not have been cancelled and non bailable warrant of arrest should not have been issued. The learned senior counsel for the petitioner has placed reliance upon the judgement of this court reported in **2009 (2) PLJR 263 (Sandeep Kumar Tekriwal v. State of Bihar)**. Paragraph 16 of the aforesaid judgement reads as follows.

“16. Section 317 Cr. P. C. provide for inquiries and trial being held in the absence of accused in certain cases. However, if the Magistrate finds that personal appearance of the accused is necessary, he would direct that accused would no longer be represented on the next date by a pleader under Section 317 Cr. P. C. but would appear in person. If the accused in spite of such order does not appear in person, it would be open for the learned Magistrate to issue warrant of arrest and proceed in accordance with the procedure prescribed in Chapter-VI of the Cr. P. C. and may also cancel bail and bail bond and proceed in accordance with Chapter-III of the Cr. P. C. It does not appear from the order of preceding dates i.e. 31.01.2008, 26.03.2008 that personal attendance of petitioner would no longer be dispensed with, and he is required to attend in person. The Magistrate in view of Section 317(1) Cr. P. C. ought to have given an opportunity to an accused to appear in person who was being allowed to be represented through a pleader. The order of preceding dates in the case on the contrary shows that Magistrate in fact accepted the representation under Section 317 Cr. P. C. The Magistrate has to follow the procedure prescribed therein, if it does not dispenses with his



personal attendance. A Magistrate while rejecting a representation under Section 317 Cr. P. C. cannot at the same time cancel bail bond and issue non-bailable warrant of arrest if on preceding dates has not clearly directed that personal attendance under Section 317 Cr. P. C. will no longer be dispensed with. The court ought to provide a reasonable opportunity to the accused to appear in person whose representation was earlier being allowed under Section 317 Cr. P. C. In this case it appears that trial lingered as a co-accused Prem Prakash was absconding. Learned counsel for the petitioner has also submitted that there have been no laches in his part.”

4. From the perusal of the facts of the present case it appears that before 21.05.2016 the case was fixed for appearance on 17.05.2016 and on that date a petition under Section 317 of the Cr. P. C. was filed and the learned Special Judge allowed that petition and fixed the case for 21.05.2016 for framing of charge with a direction to the accused to represent physically. It appears that on 21.05.2016 also the petitioner filed a petition under Section 317 of the Cr. P. C. but the learned Special Judge passed a composite order firstly rejecting the representation of the petitioner filed under Section 317 of the Cr. P. C. and thereafter cancelled the bail and bail bonds of the petitioner and also issued non bailable warrant of arrest.

5. In view of the law laid down in the case of **Sandeep Kumar Tekriwal v. State of Bihar** (*supra*), the learned Special Judge is not at all justified in passing the composite order as in one stroke he

rejected the petition under Section 317 of the Cr. P. C. and thereafter canceled the bail and bail bonds of the petitioner. The proper course would be that firstly on one date the representation filed under Section 317 of the Cr. P. C. should be rejected with a direction to the accused to appear physically on the next date and on that date, if the accused does not appear, the court may issue non-bailable warrant after cancelling bail bonds. Thus the order impugned suffers from illegality.

6. Accordingly, the order dated 21.05.2016 passed by the learned Special Judge, Vigilance, 1st Patna in Special Case No. 9 of 2000 is set aside. The petitioner is directed to appear in the court below on the next date.

This application is, accordingly, allowed.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	