

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.9773 of 2016

Arising Out of PS.Case No. -1 Year- 2016 Thana -SARAN GRP CASE District- SARAN

Sanjay Kumar S/o Sri Narendra Prasad, resident of Village- Parsadi, P.S.- Parsa Bazar, District- Saran at Chapra, at present residing at Quarter No. E/35, Railway Quarter, Alier's Tank, P.S- Chapra Town, District- Saran at Chapra

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Dewendra Narayan Singh, Advocate

For the Opposite Party/s : Mr. Surendra Kumar(APP)

CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL ORDER

3 01-04-2016 Heard learned counsel for the petitioner and the learned A.P.P. for the State.

Petitioner apprehends his arrest in connection with R.P.F. Case No. (Cr. No.) 01 of 2016 for the offence punishable under Section 3 of the RP (UP) Act.

The prosecution case, in brief, is that the informant submitted a self written report alleging therein that four wooden sleeper of railway track loaded on pick-up van from Railway Crossing No. 47 were unloaded in the campus of residence of the petitioner. It is further alleged that the said wooden sleeper of railway track, which was the property of the railway, were taken by the petitioner

illegally for making wooden bed.



It has been submitted by the learned counsel for the petitioner that he was granted police bail on 19.01.2016, but with condition that he would appear before the learned Court below on 11.02.2016, otherwise he would be penalized by recovering Rs. Two lacs either from his movable/ immovable property or through his bailors. Learned counsel for the petitioner relied on the judgment of this Court in the case of *Mahendra Prasad Singh Vrs. The State of Bihar*, since reported in *2004(3) PLJR 491*, and submits that petitioner of the said case was granted police bail, still he moved anticipatory bail petition and got relief from this Court.

From plain reading of the judgment in the case of *Mahendra Prasad Singh* (supra), I find that the judgment is on the contrary. The judgment is that a person, who has been granted the benefit of bail by the police, an application for anticipatory bail on apprehension of arrest, cannot be held to be maintainable. Paragraph 4 of the said judgment in the case of *Mahendra Prasad Singh* (supra) is quoted herein below:

“4. On considering the relevant



provision in the Code of Criminal Procedures, this Court is of the opinion that had the FIR been only for bailable offences and had the petitioner been granted benefit of bail by the police for bailable offences only under the provisions of Section 436 of the Cr.P.C. the matter could have stood on different footing. On account of offence being treated as non-bailable at the later stage due to subsequent developments, may be an application for anticipatory bail could have been found maintainable. However, in the present case which is falling for consideration this Court is of the view that since the case was initially for non-bailable offences wherein the petitioner was taken into custody and then released on bail by the police, an application for anticipatory bail on the ground that he has an apprehension of arrest in the same case cannot be held to be maintainable.”

But in the said judgment itself it has further been observed that a person who has been granted police bail must honour the said privilege and at the same time a person who is

already on bail shall not be denied such privilege unless there is any allegation of misuse.

The same proposition has been followed in the case of Ram *Vilas Singh Vrs. The State of Bihar*, since reported in *2008(3) PLJR 253* and in the case of *Kripanand Prasad @ Karu Yadav & Ors. Vrs. The State of Bihar*, since reported in *2008(3) PLJR 268* .

Under such circumstances, let the petitioner above named, appear before the Court of learned Railway Judicial Magistrate- 1st Class, Sonapur, Saran in connection with R.P.F. Case No. (Cr. No.) 01 of 2016 within a period of six weeks from today and apply for bail, which will be considered on the same day in accordance with law, keeping in view that the person, who is already on police bail, should not be denied such privilege unless there is any allegation of misuse etc.

Here, it may be said that while granting police bail to the petitioner on 19.01.2016, he was asked to appear before the learned Court below on 11.02.2016 and failure to appear before the learned Court below would entail penalty of Rs. Two lacs. The learned Court below should not treat non-appearance on 11.02.2016 as misuse of the privilege of

bail. It is also clarified that while considering his application for bail, the penalty of Rs. Two lacs imposed as a condition of non-appearance is without any basis and shall not be imposed as a pre-condition.

With the aforesaid observation and direction, this application is disposed of.

(Nilu Agrawal, J.)

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