

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.892 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- PURNIA

Raj Prakash Banthia @ Raju Bhatia Son of Hansraj Banthia, Resident of Ward No.3, Araria R.S Police Station- Araria, R.S, District - Araria.

.... Petitioner

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna
2. The Superintendent of Police, Araria.

.... Respondent/s

Appearance:

For the Petitioner/s : Mr. Jagdish Prasad Bhagat, Advocate.

For the Respondent/s : Mr. Md. Irshad, AC to SC-1.

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

ORAL JUDGMENT

Date: 20-09-2016

The order dated 12.05.2016 passed by learned Judicial Magistrate, Purnea, whereby an application submitted by the petitioner for release of seized property i.e. cash of Rs. 3,97,000/- was not entertained for the reason that the case is triable by the Court of Sessions and such an application is not maintainable before the Court of Magistrate.

Learned court of jurisdiction magistrate passed an order dated 07.08.2015 rejecting the claim of the petitioner for release of the cash inter alia, for the reason the case is at initial stage and the trial is yet to begin and the seized money may be crucial and needed during the trial. Such order was set aside by the learned 5th Additional Sessions Judge, Purnea on 22.12.2015 and that the learned court of jurisdiction magistrate was directed to pass fresh

order on release petition of the petitioner keeping in view the facts in accordance with law and in view of the guidance of the Hon'ble Supreme Court Judgment reported as AIR 2003 Supreme Court 638, Sunderbhai Ambalal Desai v. State of Gujarat. It is, thereafter, the learned Additional Chief Judicial Magistrate, Purnea passed an order that the case is triable by the court of Sessions, therefore, that Court will not be competent court for release of the seized property.

The order passed by the learned Additional Chief Judicial Magistrate is revisable. The petitioner has also the remedy to file an application before the learned Sessions Judge for release of the seized property. But at this stage without going into the question whether the Court of the Magistrate has the jurisdiction to release the seized property or not, I deem it appropriate to direct learned Sessions Judge to entertain an application for release of the cash and decide in accordance with law. It shall be open to the Sessions Judge to entertain such application for release of the seized property. The Court shall pass an appropriate order in accordance with law.

Accordingly, this writ petition is disposed of.

(Hemant Gupta, J.)

Mishra/-

AFR/NAFR	N.A.F.R
CAV DATE	N.A.
Uploading Date	23.09.2016
Transmission Date	23.09.2016