

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5550 of 2017

Arising Out of PS. Case No. -18 Year- 2016 Thana -JADIA District- SUPAUL

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BITU KUMAR @ SUMAN SAURABH, SON OF KAVIR YADAV,
RESIDENT OF VILLAGE- BELACHAND, POLICE STATION-
BANMANKHI, DISTRICT- PURNEA.

.... PETITIONER/S

VERSUS

THE STATE OF BIHAR

.... OPPOSITE PARTY/S

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Appearance:

For the Petitioner/s : Mr. Arun, Adv.

For the Opposite Party/s : Mr. Sri Bharat Lal, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 08-02-2017 Heard learned counsel for the petitioner as well as

learned Additional Public Prosecutor.

At an earlier occasion while rejecting the prayer for
bail vide order dated 27.07.2016 under Criminal Miscellaneous
No.29424 of 2016 (Annexure-1) a liberty was given to the
petitioner in following way:-

**“However, if so advised petitioner may
renew his prayer for bail after examination
of the informant.”**

It has been submitted on behalf of petitioner that
charge has already been framed on 15.09.2016. Since thereafter,
witnesses have not turned up. This Court happens to be the highest
court for the purpose of bail, on account thereof, the present
petition has been filed for allowing the petitioner to avail privilege



of bail/directing presence of informant.

At the present juncture, attention of the learned counsel for the petitioner has been invited over the specific direction as referred above, and further, for specific direction on that, very score it should be under the banner of 482 Cr.P.C., the learned counsel for the petitioner has submitted that court should order relating to entitlement of bail, and not over maintainability of petitioner's prayer in the background of condition imposed while rejecting the prayer at an earlier occasion.

The learned Additional Public Prosecutor opposed the prayer.

The criminal jurisprudence reminds the solemn obligation identifying an accused to be innocent till he is so convicted, but with certain exception in the background of human character adverse to the same and for that, pre arrest detention has been prescribed, allowed, recognized, identifying the character of the offence to be bailable, non-bailable in consonance with nature of allegation. Therefore, the concept of accused being innocent till a verdict comes is found properly eclipsed with the aforesaid eventuality and that happens to be reason behind that mandate of constitution under Article 21 as well as 22 coupled with Article 14 has also been interpreted in same manner though, speedy trial in



the aforesaid background has been identified but not possible in the background of the social legal framework. Therefore, in each and every case, the court would not be in a position to chase the witnesses and procure their attendance, at least by the superior court when there happens to be no effort at the end of an aggrieved to raise the issue before the appropriate court where matter is being adjudged.

Now coming to the other aspect, admittedly power of superintendence is prescribed under Section 483 of the Cr.P.C. as well as under Article 227 of the Constitution of India. That power is to be exercised only to the extent of identifying whether the proceeding being taken by the learned lower court is in accordance with law or not. Delay, if any, is not at all within the aforesaid domain that too when there happens to be no laxity or insincerity. That being so, the concept of speedy trial though considered at different occasion, found fragile whereunder no time frame is found plausible one. Now the prayer of the petitioner is to be considered. The privilege was granted with a condition that after examination of informant he will be in a position to renew his prayer. The present methodology coercing the Bench to procure attendance of the witness in order to allow his prayer ripen appears to be novice effort at the end of the petitioner.



Therefore, the instant petition is found non-maintainable and is accordingly dismissed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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