

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33445 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- SASARAM (ROHTAS)

=====

1. Deo Bharat Singh, son of late Mallu Singh, R/o Village- Bahuara, P.S.-
Kargahar, District Rohtas at Sasaram.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar @ Manu, Advocate

For the Opposite Party/s : Mrs. Sucheta Yadav, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 22-09-2017

1. This restoration application has been filed for restoration of Cr. Misc. No.46203 of 2016 to its original file which stood dismissed on 04.02.2017 for non-compliance of the peremptory order dated 28.01.2017. Aforesaid Cr. Misc. Application was filed on behalf of the petitioner for grant of anticipatory bail in Sanjhauli P.S. Case No.11 of 2016 pending in the Court of Sub Judge 1st-cum- Additional Chief Judicial Magistrate, Vikramganj, Rohtas.

2. Counsel for the petitioner has submitted that if the aforesaid application is not restored, there will be irreparable loss to the petitioner. There was no deliberate latches on the part of the petitioner.

3. Learned counsel for the State has, however,



submitted that there is no provision in the Code of Criminal Procedure for restoration of a case. Moreover, this case has not been dismissed in default, rather, the same stood dismissed for non-compliance of the Court's order.

4. Section 482 of the Code of Criminal Procedure speaks about exercise of inherent power of the High Court. The Hon'ble Supreme Court in the case of *Inder Mohan Goswami Vs. State of Uttaranchal* reported in (2007) 12 Supreme Court Cases 1 has clearly held that exercise of inherent power under Section 482 Cr. P. C. has to be exercised very sparingly, carefully and with great caution and may be exercised (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is to be exercised *ex debito justitiae* to do real and substantial justice, for the administration of which alone the Court exists.

5. The instant anticipatory bail application was dismissed for non-compliance of the Court's order dated 28.01.2017. There was specific order of the Court dated 28.01.2017 that application shall stand rejected without further reference to a Bench if the defect(s) as pointed out by the Stamp Reporter are not removed within the time granted by the Court.

6. There is no bar in law to file fresh anticipatory bail



application by the petitioner in the event the same is dismissed for non compliance of order.

7. Section 362 of the Code of Criminal Procedure reads as under:

“362. Court not to alter judgment.—Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.”

8. This Court by order dated 28.01.2017 passed in Cr. Misc. No.46203 of 2016 had directed that the application shall stand dismissed without further reference to a Bench if defect(s) are not removed within the time granted by this Court.

9. Section 482 of the Code of Criminal Procedure, which gives inherent power to the High Court, reads as hereunder:

“482. Saving of inherent power of High Court—Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

10. As such, Section 482 of the Code of Criminal Procedure does not speak of power of High Court to restore the case dismissed for non-compliance of order of the Court. In fact, it does



not give any inherent power to Court to restore the case to its original file dismissed for non-compliance of order of Court.

11. This Court is of the view that since there is no bar in filing fresh anticipatory bail application after the same having been dismissed for non-compliance of the peremptory order dated 28.01.2017, the petitioner is not going to suffer any irreparable loss.

12. Thus, in the facts and circumstances of the case, this Court is not inclined to restore Cr. Misc. No.46203 of 2016 to its original file which stood dismissed on 04.02.2017 for non-compliance of the peremptory order dated 28.01.2017.

13. This Restoration Application is, accordingly, dismissed with liberty to petitioner to file fresh anticipatory bail application in accordance with law, if so advised.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	09-08-2017
Uploading Date	04-10-2017
Transmission Date	04-10-2017

