

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.54086 of 2017

Arising Out of PS.Case No. -136 Year- 2017 Thana -SIMRI District- BUXAR

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1. Manu Kunwar, son of late Shambu Kunwar,
 2. Kundan Kumar @ Kundan Kunwar, son of Haridwar Kunwar,
 3. Vidya Sagar Kumar @ Vidya Sagar Kunwar, son of late Bodhi Kunwar,
all resident of village- Dumri, P.S.- Simri, District- Buxar.
- Petitioner/s

Versus

1. The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Choubey, Advocate
For the Opposite Party/s : Mr. Nityanand Tiwary, APP
For the Informant : Mr. Digvijay Kumar Ojha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL ORDER

9/ 24-05-2018

Show cause explanation has been received from the

Additional Chief Judicial Magistrate, IV, Buxar, as well as I/c

Additional Chief Judicial Magistrate, IV, Buxar, on 10.11.2017.

The Additional Chief Judicial Magistrate, IV, Buxar, has submitted in the show cause that order of remand was passed by the In-charge Court as he was not on duty on the relevant date.

I/c Additional Chief Judicial Magistrate, IV, Buxar, on 10.11.2017 has submitted show cause, wherein, it has been mentioned that prior to remanding the accused Manu Kunwar, oral submission was made on behalf of the petitioner that he has been granted anticipatory bail by this Court by order dated 10.11.2017. It is mentioned in the order dated 10.11.2017 by



which accused, Manu Kunwar, was remanded by the In Charge Court that the Court was informed orally about grant of anticipatory bail by this Court. Therefore, from the order-sheet dated 10.11.2017 itself, it is apparent that Court concerned had got knowledge from the accused before remand about grant of anticipatory bail to him by this Court.

The In charge Additional Chief Judicial Magistrate, IV, Buxar, on 10.11.2017, namely, Ms. Kalpana Srivastava, Additional Chief Judicial Magistrate, V, Buxar, has submitted in her show cause that accused, Manu Kunwar, was already arrested on 09.11.2017. He was pleading orally at the time of his remand that he has been granted anticipatory bail by Hon'ble Patna High Court on 10.11.2017. In order to check genuineness of his submission, she demanded copy of order of Hon'ble High Court, but the same was not produced, which raised doubt about the genuineness of the oral submission of the accused. The Court below also searched the order of the Hon'ble High Court on website of the High Court, but could not find the same on the official website of the High Court. The Officer also tried to search it from the office of the ACJM, IV, Buxar, but it was not available there. Thereafter, Officer concerned also searched the order in the office of the District & Sessions Judge, Buxar, but no



such order was received there at that time. Officer concerned has further stated that the Hon'ble High Court has been pleased to direct the lower Courts not to act upon orders and judgment placed before it by the concerned parties until and unless they have been received in the concerned Court through proper channel after being duly checked and verified by the authorized signatories. In the instant case, no written order was placed before the Court, so, she had no reason to act upon the oral information of the accused or his learned counsel.

Additional Chief Judicial Magistrate, IV, Buxar, has submitted in the show cause that order of this Court has been received on record on 15.11.2017 and provisional bail was granted to the accused on the petition filed by him for grant of regular bail.

Order-sheet dated 10.11.2017 and 17.11.2017 has been received along with show cause.

The In charge Additional Chief Judicial Magistrate, IV, Buxar, has mentioned in the order-sheet dated 10.11.2017 that accused Manu Kunwar had given oral information that his anticipatory bail petition i.e. Cr. Misc. No.54086 of 2017 has been allowed by the Hon'ble High Court today i.e. 10.11.2017, but copy of the aforesaid order of High Court was not available



nor copy of any such order has been produced by the accused at the time of his remand. The accused was ordered to send to Central Jail, Buxar, fixing 24.11.2017 for production and awaiting final form.

As such, from the order dated 10.11.2017 itself, it is apparent that In charge Additional Chief Judicial Magistrate, IV, Buxar, had knowledge from the accused about grant of anticipatory bail to him by the High Court on 10.11.2017 prior to remanding him, but still the Court concerned has ordered to remand the accused to custody.

Such attitude of the Court appears to be totally illegal and not in accordance with law. It appears that Court concerned has no consideration of Article 21 of the Constitution of India, which provides protection of life and personal liberty of a citizen. The Court concerned has remanded the accused on 10.11.2017 even after oral submission, made on his behalf, that he has been granted anticipatory bail by Hon'ble Patna High Court on 10.11.2017 vide Cr. Misc. No.54086 of 2017.

Judicial discipline requires that on such submission having been made by the accused, bail bond could have been accepted provisionally after taking Affidavit from the accused to verify the facts instead of straightway remanding the accused



even after coming to know of the fact from the accused that he has been granted anticipatory bail by the High Court, which is mentioned in the order dated 10.11.2017. It further appears that accused, Manu Kunwar, had filed regular bail petition and he was granted provisional bail by the Additional Chief Judicial Magistrate, IV, Buxar, by order dated 17.11.2017.

This Court does not approve such act of the Court concerned. The accused was released on provisional bail on 17.11.2017 after filing regular bail on his behalf. This is a glaring case of judicial indiscipline.

The Officer concerned is warned to be careful in future and take proper care that no such recurrence takes place again in future. This Court will recommend for necessary action in administrative side if such act is repeated by the Officer concerned in future.

This matter is, accordingly, disposed off.

Let this order be communicated to the Officer concerned (In-charge Additional Chief Judicial Magistrate, IV, Buxar, on 10.11.2017).

(Sanjay Priya, J)

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