

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.25259 of 2018

Arising Out of PS.Case No. -253 Year- 2016 Thana -
CHAINPUR District- BHABHUA (KAIMUR)

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1. Ainul Ansari son of Late Taiyab Ansari
2. Md. Hussain Ansari son of Maheddin Ansari both residents of
Village Nainpura (Deuwa), P.S. Chainpur, District Kaimur at
Bhabua.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Abul Hasan Ansari son of Wakil Ansari resident of Village
Nanpura (Deuwa), P.S. Chainpur, District Kaimur at Bhabua.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Tribhuwan Narayan, Adv
For the Opposite Party/s : Mr. Tarkeshwar Nath Thakur, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 15-05-2018

The petitioners, who are accused in Chainpur P.S. Case No. 253 of 2016 instituted for the offences under Sections 341, 323, 307, 504, 34 of the Indian Penal Code and Section 27 of the Arms Act had approached this Court vide Cr. Misc. No. 41509 of 2017 and analogous cases for grant of bail. The prayer for bail was rejected by a Bench of this Court on 08.09.2017 but a direction was given to the learned Trial Court to expedite the trial and the petitioners were given the liberty to renew their prayer for bail after six months.

The petitioners perhaps understood the aforesaid liberty to be that the petitioners were required to approach the



Court below after completing six months in custody and, therefore, an application for bail was filed by the petitioners before the Court below on 03.01.2018. Since other accused persons having similar allegation against them were granted bail, petitioners thought it fit to approach the Court below for grant of bail on the grounds of parity as well.

The Court below i.e. learned Sessions Judge, vide order dated 04.01.2018 granted bail to the petitioners, taking into account that they had remained in jail for six months and that two other similarly situated accused persons had earlier been granted bail by the Trial Court.

Later, for the petitioners to have misled the Trial Court in granting bail to them, an application was filed for cancellation of their bail and by the order impugned dated 03.02.2018, the bail granted to the petitioners was cancelled. While cancelling the bail of the petitioners, it was held by the Court below that the direction of the High Court was to approach the Trial Court after six months. The petitioners moved the Court below only after three months and gave an impression to the Trial Court that the requirement as directed by the High Court was of approaching the Court below after completing six months in custody. This was held by the Trial Court to be a misleading statement and hence, the bail granted to the petitioners was cancelled.



The learned counsel for the petitioners has submitted that there was no such intention on the part of the petitioners which would be evident from the fact that in the bail petition preferred before the learned Sessions Judge, it was clearly stated by the petitioners that their bail application before the High Court was rejected with a direction to approach the Court below after six months. It appears that since the order of the High Court was not clear whether the petitioners were required to approach the Court below after completion of six months of the order or after completion of six months in custody, the petitioners thought it proper to approach the Court below after completing six months in custody. This impression in the mind of the petitioners was further strengthened on the ground that bail to other similarly situated co-accused persons had been granted. Under such circumstances, the petitioners had approached the learned Court below for the needful.

Though, technically no fault could be found with the order impugned in as much as the petitioners were directed to approach the Trial Court after six months and not after six months in custody, but considering the nature of accusation and taking into account the fact that the other accused persons who are similarly situated have been granted bail by the learned Trial Court, as also that there is a case and counter case, this Court considers it expedient to set aside the order dated 03.02.2018



passed by the learned Additional District Judge, IV, Kaimur at Bhabua in connection with Sessions Trial No. 358/363 of 2017, arising out of Chainpur P.S. Case No. 253 of 2016.

The petitioners are directed to remain on the same bail bond which was furnished by them after grant of bail by the Trial Court. However, it is made clear that if the petitioners do not participate in the trial, they would make themselves liable for their bail to be cancelled.

In case of absence of the petitioners from the proceedings on two consecutive occasions without there being any plausible reason for the same, the Trial Court shall take steps for cancellation of the bail of the petitioners.

With the aforesaid directions, the present petition is allowed.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19/05/2018
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