

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.8397 of 2018

Arising Out of PS.Case No. -20 Year- 2017 Thana -GANGTA District- MUNGER

=====

Md. Bhokal @ Hasin S/o Md. Rahman, resident of village- Bardah, P.S.- Muffasil,
District- Munger.

..... Petitioner/s

Versus

The State of Bihar

..... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Advocate
: Mr. Vipin Kumar Singh, Advocate
: Ms. Smriti Singh, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 26-02-2018

At the outset, learned counsel for the petitioner seeks leave of the Court to add Article 227 of the Constitution of India in the provision of law along with Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') under which the application was originally filed. Leave is granted.

2. Heard learned counsel for the petitioner and learned counsel for the State.

3. This application has been filed by the petitioner for quashing of the order dated 05.01.2018 passed by the learned Additional Sessions Judge-1, Munger in Sessions Trial No.01 of 2018



arising out of Gangta P.S. Case No.20 of 2017 by which he has rejected the bail bond furnished by the petitioner in compliance with the order dated 25.11.2017 passed in B.A. No.862 of 2017 by the learned Additional Sessions Judge-II, Munger.

4. It is submitted by Mr. Bindhyachal Singh, learned counsel for the petitioner that the petitioner was apprehended in connection with Gangta P.S. Case No.20 of 2017 on 13.11.2017 and since then he is in custody. His prayer for bail was rejected by the Court of Magistrate. Thereafter, he filed an application for grant of bail before the Court of Sessions, which on transfer came to the Court of Additional Sessions Judge-II, Munger, who allowed the same, vide order dated 25.11.2017 passed in B.A. No.862 of 2017, but he could not furnish bail bond till the time the case was pending before the Court of Additional Chief Judicial Magistrate. After submission of the charge-sheet, since the case was triable by the Court of Sessions, the learned Additional Chief Judicial Magistrate committed the case to the Sessions Court, vide order dated 22.12.2017. As the case was pending in the Court of Additional Sessions Judge-I, after commitment, the petitioner furnished bail bond in his court, but he rejected the same on erroneous ground and directed him to file bail petition afresh, vide order dated 05.01.2018.



5. Mr. Singh, learned counsel for the petitioner submitted that the order impugned passed by the learned Additional Sessions Judge-1 is bad in law. He submitted that the court below failed to appreciate that there is no limit of time within which the bond may be executed after the order for releasing on bail is passed. He submitted that once the prayer for bail of the petitioner was allowed by the learned Additional Sessions Judge-II, it was incumbent upon the court in *seisin* of the matter to accept the bail bond, if the same was in order and release the petitioner on bail, but by rejecting the bail bond furnished by the petitioner, the learned Additional Sessions Judge-I has curtailed the indefeasible right of the petitioner to be released on bail granted by a court of competent jurisdiction.

6. On the other hand, Mr. Jhankhandi Upadhyay, learned Additional Public Prosecutor appearing for the State submitted that the offences alleged are serious in nature and the learned Additional Sessions Judge-I has committed no error in rejecting the bail bond furnished by the petitioner after the case was committed to the court of sessions. He submitted that the learned Additional Sessions Judge-I has rightly held in his order that he is not bound by the order passed by a court having equal powers.

7. I have heard learned counsel for the parties and perused



the record.

8. The petitioner is one of the named accused in Gangta P.S. Case No.20 of 2017 dated 18.04.2017 registered for the offences punishable under Sections 25(1-A), 25(1-AA), 25(1)(b)(a), 26(1)(2)(3) and 35 of the Arms Act. He was apprehended in the said case on 13.11.2017 and was remanded to judicial custody. He moved for grant of bail before the Court of Additional Chief Judicial Magistrate, Munger, which was rejected. Thereafter, he filed an application under Section 439 of the Cr.P.C. for grant of bail before the Court of Sessions. The learned Session Judge, Munger transferred the bail application of the petitioner for consideration to the Court of Additional Sessions Judge-II. The learned Additional Sessions Judge-II vide order, dated 25.11.2017, passed in Bail Application No.862 of 2017, allowed the prayer of the petitioner with certain conditions. The operative part of the afore-stated order dated 25.11.2017 reads as under:-

“I have heard the rival submissions of both the parties and perused the trial Court record, it appears from perusal of the trial Court record that applicant is in judicial custody since 13.11.2017 and from the perusal of seizure list it appears that from whom arms was recovered is not mentioned. Seizure list does not mention the name of any



accused person.

It also appears from the perusal of record that charge sheet was filed without sanction report and on that basis Co-accused Chandan Bhagat @ Laden, who was arrested on the spot, has been granted bail by this Court vide B.A. No. 590/17 dated 26/7/2017.

Considering the entirety of the facts and circumstances applicant is hereby directed to be released on bail on furnishing bail bond of Rs. 10,000/- with two sureties each of the like amount with condition

- (i) That one of the bailors shall be a close relative of the applicant.*
- (ii) That the applicant shall not indulge in any similar offence till conclusion of the trial.*
- (iii) That the applicant will be well represented on each and every date and if he fails to do so on two consecutive dates without sufficient reason, his bail bond will be liable to be cancelled.*
- (iv) Accused person as well as sureties for the purpose of identification will produce following documents either Aadhar card or Bank Pass-book, Voter I Card and mobile numbers before the Court at the time of furnishing bail bond.*

True copy of above described documents after comparing with original documents and the same will be kept on record.

Applicant is directed to furnish bail bond before



Ld. Trial Court after framing of charge.”

9. Even before the petitioner could have furnished the bail bond in compliance with the afore-stated order 25.11.2017, the learned Additional Chief Judicial Magistrate, Munger, after complying with the mandatory provisions prescribed under Section 207 of the Cr.P.C. committed the case to the Court of Sessions on 22.12.2017. After commitment, since the case was pending in the Court of Additional Sessions Judge-I, Munger, the petitioner furnished bail bond in the said court as directed, vide order dated 25.11.2017, in Bail Application No.862 of 2017, but the same was rejected, vide order, dated 05.01.2018, solely on the ground that the Additional Sessions Judge-II, who had passed the order granting bail to the petitioner was having equal power like him and, thus, he was not bound to follow his order. The operative part of the impugned order dated 05.01.2018 passed by the learned Additional Sessions Judge-I, Munger reads as under:-

“अभिलेख अवलोकन से ज्ञात होता है कि उपरोक्त जमानत आदेश विद्वान अपर सत्र न्यायाधीश द्वितीय मुंगेर द्वारा दिया गया है तथा बाद धारा 25 (I-A) / 25 (I-AA) / 25 (I-b) AC / 26 (I)(II)(III) / 35 शस्त्र अधि० से सम्बन्धित है जो सत्र न्यायालय द्वारा विचारणीय है। चूँकि प्रस्तुत विचारणीय न्यायालय तथा जिस न्यायालय द्वारा जमानत आदेश पारित किया गया है, दोनों समकक्ष



न्यायालय है जो एक दूसरे का आदेश मानने के लिए वाध्य नहीं है। ऐसी स्थिति में अभियुक्त की ओर से आज दाखिल बन्धपत्र इस निर्देश के साथ अस्वीकृत किया जाता है कि प्रस्तुत विचारणीय न्यायालय में पुनः जमानत आवेदन दाखिल कर जमानत की प्रार्थना करें।”

(emphasis mine)

10. Having heard learned counsel for the parties and perused record, I am of the considered opinion that the learned Additional Sessions Judge-1, Munger was not right in declining to accept the bail bond furnished by the petitioner. The impugned order passed by him would go to indicate that he is under the impression that if he accepts the bail bond as directed by the learned Sessions Judge-II, Munger his court would be deemed to be subordinate or inferior to the court of Additional Sessions Judge-II, Munger. Palpably, his view does not reflect correct understanding of law.

11. In this regard it would be pertinent to note that the order of bail was granted by the learned Additional Sessions Judge-II in exercise of power conferred on him under Section 439 of the Cr.P.C. The learned Additional Sessions Judge-I failed to appreciate that once bail was granted, the execution of bond by the accused and sureties was to be made by a separate process stipulated under Section 441 of the Cr.P.C. before the court in *seisin* of the matter and the bond so furnished in compliance with the court's order could not have been



rejected unless the court was not satisfied about the identity, solvency or reliability of the sureties. The court below failed to appreciate that once bail is granted under any of the provisions either under Section 437 or 439 or 167(2) of the Cr.P.C., unless the same is cancelled, in accordance with law, it remains in force. The accused and the sureties may furnish bond at any time subsequently.

12. In Raghbir Singh and Others vs. State of Bihar [(1986) 4 SCC 481], the Supreme Court in clear terms laid down that the bond could be executed at any time by the accused. It held as under:

“.... What is of importance is that there is no limit of time within which the bond may be executed after the order for release on bail is made. Very often accused persons find it difficult to furnish bail soon after the making of an order for release on bail. This frequently happens because of the poverty of the accused persons. It also happens frequently that for various reasons the sureties produced on behalf of the accused persons may not be acceptable to the court and fresh sureties will have to be produced in such an event. The accused persons are not to be deprived of the benefit of the order for release on bail in their favour because of their inability to furnish bail straightway. Orders for release on bail are effective until an order is



made under Section 437(5) or Section 439(2). These two provisions enable the magistrate who has released an accused on bail or the Court of Session or the High Court to direct the arrest of the person released on bail and to commit him to custody.”

13. In the instant case, the bail was granted to the petitioner by the learned Additional Sessions Judge-II in exercise of power under Section 439 of the Cr.P.C. when the case was pending in the court of Additional Chief Judicial Magistrate. Simply because the petitioner and his sureties could not furnish bail bond in the Court of Additional Chief Judicial Magistrate, the same would not mean that he could not furnish bond in the Court of Sessions after commitment. The rejection of the bond furnished by the petitioner by the learned Additional Sessions Judge-I on the ground that the court which had passed the order was having equal power and, thus, the same was not binding on him is not only erroneous in law but also perverse. I am constrained to record that the impugned order has been passed in a manner which is against the judicial norms and propriety. The Code of Judicial Conduct requires a Judicial Officer to respect and comply with the law and to act at all times in a manner that promotes public confidence in the justice delivery system. Asking an accused to apply



for bail afresh when he has already been granted bail by a court of competent jurisdiction and rejecting the bond furnished in compliance with a judicial order amounts to gross judicial indiscipline. It also amounts to detaining a person illegally in custody after grant of bail.

14. In view of the discussions made above, the impugned order dated 05.01.2018 passed by the learned Additional Sessions Judge-1, Munger in Sessions Trial No.01 of 2018 is set aside. He is directed to accept the bail bond furnished by the petitioner in compliance with the order dated 25.11.2017 passed in B.A. No.862 of 2017 after verifying the same in accordance with law.

15. However, it is not the end of the matter. Before I part with this case, I must record that a Judge is expected to be conversant and familiar with the provisions of the relevant Acts and Rules in the area he is asked to work. The justice delivery system is under an obligation to provide justice to the litigants. If it is left in the hands of poorly trained Judges, the entire system would be discredited and people will lose faith in it. It is said that justice should not only be done, it must also be ensured. In order to ensure justice, it is required that the Judges should be well trained. A proper training not only enhances rationality in judicial interpretation of law, but also enhances the judicial approach, which results in the improved service



in the justice delivery system. It is with this object we have State Level Judicial Academy for judicial training in our State.

16. The manner in which the impugned order has been passed, I am of the considered opinion that Mr. J.S.Srivastava, learned Additional Sessions Judge-1, Munger lacks elementary knowledge of the Code of Criminal Procedure. It would be in his interest as also in the interest of the justice delivery system of the State if he undergoes specially designed training course at Bihar Judicial Academy in criminal law and procedure at the earliest. Hence, the learned Registrar General, Patna High Court is directed to ensure that name of Mr. J.S.Srivastava, learned Additional Sessions Judge-1, Munger, is recommended for undergoing in-service training course in the Bihar Judicial Academy at the earliest under the supervision of the learned Director, Bihar Judicial Academy at least for a period of three months. The learned Director, Bihar Judicial Academy shall be required to ensure that the in-service training of the officer is made under his personal supervision in criminal law and procedure. On completion of his in-service training, the learned Director, Bihar Judicial Academy should submit his performance report to this Court. The Director, Bihar Judicial Academy shall, if possible, make it convenient to get a training programme in Cr.P.C. formulated for a batch of Judicial



Officers and Mr. J.S.Srivastava be placed in that batch. This will avoid any extra effort in imparting judicial training to only one officer and it will benefit others as well.

17. The learned Registrar General, Patna High Court is directed to send a copy of this order to the learned Director, Bihar Judicial Academy for the needful.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	28.02.2018
Transmission Date	28.02.2018

