

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.203 of 2018

Arising Out of PS.Case No. -315 Year- 2012 Thana -BIHARSHARIF District- NALANDA
(BIHARSHARIFF)

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1. Atul Kumar Nirala @ Atul Kumar, Son of Late Arun Kumar, resident of-
Meerachak, Police Station- Bind, District- Nalanda, presently residing at
Kashyap Suman Apartment, RMS Colony, 305A, Kankarbagh, Police
Station- Kankarbagh, District- Patna.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Prabhu Narayan Sharma, Adv

For the Respondent/s : Mr. Shyed Ashfaq Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

5 20-03-2018

Heard learned counsel for the appellant as well as
learned APP.

2. This appeal has been filed in accordance with
Section 389(2) of the CrPC on account of rejection of prayer for
bail by the learned appellate court, 3rd Additional Sessions Judge,
Biharsharif relating to Cr. Appeal (SJ) No. 56/2017 vide order
dated 07.11.2017.

3. This appeal has been listed under office note on
account of defect persisting over the same and having not been
removed at the end of the appellant, during intervening period, has
been listed before the Bench, for passing of necessary order on
that very score. Yesterday, while the matter was listed, on that
very moment, the order dated 07.11.2011, the order impugned was



gone through. After perusal of the same, it is evident that on behalf of appellant, prayer for bail in terms of Section 389(1) CrPC was made twice but, the date whatever been incorporated in the order impugned discloses it as 04.12.2017 as well as 06.12.2017, that means to say, date of petition happens to be after the date of passing of order impugned and on that very score, learned counsel for the appellant was requested to clarify the same, on the other hand, the matter has been passed over.

4. Today also, when the case has been called out instead of clarifying the aforesaid situation, learned counsel for the appellant is insisting upon that it happens to be the duty of the court and not of the party. On query that on which date the prayer was made on behalf of appellant, the learned counsel for the appellant is silent. That being so, when the petition contains the date after passing of the order impugned, then in that circumstance, the aforesaid situation suggests that either there happens to be failure at the end of appellant in putting the date over the petition by which prayer was made before the learned appellate court properly or there happens to be wrong at the end of the learned lower court in incorporating date of the petition to be 04.12.2017 as well as 06.12.2017.

5. In the aforesaid facts and circumstances, it looks



better to give opportunity to the appellant to re-agitate the matter with full clarity before learned lower court who will pass appropriate order in accordance with law after hearing the parties and on that very moment would be very much cautious so that defect be it at the end of appellant or at the end of court itself should not arise. In terms thereof, instant appeal is disposed of.

(Aditya Kumar Trivedi, J)

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