

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.9489 of 2018

Arising Out of PS.Case No. -205 Year- 2017 Thana -AWADPUR District- KATIHAR

- =====
1. Sk. Nasiruddin @ Md. Nasiruddin, son of late Dolai,
 2. Md. Sanfraz, son of Nasiruddin,
 3. Md. Kurban Ali, son of Nasiruddin,
 4. Md. Nasimuddin @ Sonwa, son of Nasiruddin,
 5. Rukhsana @ Rukhsana Khatoon, wife of Md. Nasimuddin,
 6. Sarjuna Khatoon, wife of Md Kurban Ali, all are resident of village-
Chikani Tola, Police Station- Abadpur, District- Katihar.
- Petitioner/s

Versus

1. The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md. Helal Ahmad, Advocate

For the Opposite Party/s : Smt. Pronati Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL ORDER

6/ 24-05-2018

Perused the explanation submitted by the Court
concerned as well as concerned Secretary.

By filing Mentioning Slip by the counsel for the
petitioners, it has been brought to the notice of the Court that
after disposal of anticipatory bail application by order dated
22.02.2018, order has been uploaded on 05.03.2018. In the
meantime, one of the petitioners has been arrested and remanded
to judicial custody.

Counsel for the petitioners has submitted that
information was given to the concerned Court that Status Report
of the case is available on the website of the Hon'ble Court on



the same day with regard to grant of anticipatory bail to the petitioners. The Court below was also informed that petitioners are ready to swear Affidavit with regard to grant of anticipatory bail by this Court, but still the Court has remanded one of the petitioners to custody.

Explanation has been received from the Court concerned, which remanded one of the petitioners to custody even after grant of anticipatory bail by this Court, and also from the Secretary concerned.

The Officer has submitted in the explanation that the order dated 22.02.2018 passed in Cr. Misc. No.9489 of 2018 was received in her office on 07.03.2018. Accused, namely, Md. Nasimuddin, was remanded to jail custody on 26.02.2018 in connection with aforesaid case on the basis of forwarding letter of ASI of Abadpur P.S. The Officer concerned has mentioned in the explanation that status of Cr. Misc. No.9489 of 2018 was available on the website of the Hon'ble Court as bail petition disposed of on 22.02.2018 without mentioning allowed/rejected and, therefore, on the basis of that very fact i.e. in absence of allowed/rejected, same has not been acted upon in good faith in terms of compliance of Hon'ble Court's letter bearing No.28591-28621/Computer Cell dated 28.06.2014, copy of which has been



enclosed as Annexure-A with the explanation. Copy of the bail order was sent on the official E mail of the District & Sessions Judge, Katihar, on 06.03.2018. Officer concerned has further mentioned in the explanation that after receipt of the order of this Court on 07.03.2018, accused, namely, Nasimuddin, who was in judicial custody, as well as other co-accused, namely Sk. Nasiruddin, Md. Sanfraz, Md. Kurban Ali, Rukhsana @ Rukhsana Khatoon and Sarjuna Khatoon were released on furnishing bail bonds as directed in the order.

This Court finds from the explanation of the Officer concerned that the matter was brought to the notice of the Court at the time of remand of the accused that accused persons have been granted anticipatory bail by this Court by order dated 22.02.2018 passed in Cr. Misc. No.9489 of 2018. The Advocate concerned also stated that accused was ready to swear Affidavit in support of such statement. The Court below itself found on the website of the Court that aforesaid application has been disposed off on 22.02.2018, but still the Court concerned has remanded the accused, namely, Md. Nasimuddin to jail custody on 26.02.2018. Annexure-A, which has been enclosed by the Officer concerned with the explanation, nowhere speaks to remand the accused to custody even if statement is made on behalf of the accused about



grant of anticipatory bail if no order is received on official E mail. Annexure-A simply speaks that bail order shall be sent on official E mail of the District & Sessions Judge. Subject in the aforesaid letter is mentioned as communication of orders from High Court by E mail instead of by Fax. Aforesaid letter has no concern with remand of the accused to custody even after making submission by the accused or by his counsel that he has been granted anticipatory bail by Hon'ble Patna High Court and even they were ready to swear Affidavit in this regard.

This Court finds that action of the Court below in this case to remand the accused was wholly illegal. The Court below has seen the status of the case on the website that anticipatory bail application has been disposed of on 22.02.2018. The Magistrate should have imagined the consequence which happened in the instant case that a person was remanded to custody even after grant of anticipatory bail by the High Court. The Court concerned appears to have no appreciation of Article 21 of the Constitution of India, which provides protection of life and personal liberty of a citizen.

Judicial discipline requires that in the event of such submission being made by the petitioner, bail bond could be accepted provisionally after taking Affidavit from the accused



instead of straightway remanding the accused to custody when he is making submission that he has been granted anticipatory bail by the Hon'ble High Court.

Keeping in view the fact that petitioners have already been released on bail by the Court concerned on 07.03.2018, this Court takes lenient view in the matter and instead of recommending for action on administrative side, warns the Officer concerned to be careful in future and not to commit such illegality and judicial indiscipline in future.

The Secretary concerned has mentioned in the show cause that he was on Casual Leave from 27.02.2018 to 28.02.2018. He sustained injury due to some accident on 03.03.2018. Therefore, delay has occurred in uploading the order.

Show cause submitted by the Secretary is accepted. He is directed to be careful in future.

This matter is, accordingly, closed.

Let a copy of this order be communicated to the concerned Officer as well as the concerned Secretary.

(Sanjay Priya, J)

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