

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.27753 of 2018

Arising Out of PS. Case No.-35 Year-1996 Thana- RAJAPAKAR District- Vaishali

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Mahesh Prasad Shukla @ Mahesh Shukla, Son of Ram Murat Shukla,
Resident of Village- Bishanpur Titra, Police Station- Rajapakar, District-
Vaishali at Hajipur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Poonam Devi, Wife of Ranjan Shukla, Resident of village- Bishanpur Titra,
Police station- Rajapakar, District- Vaishali.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar
For the Opposite Party/s : Mr. Sri Jharkhandi Upadhyay

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

3 07-08-2018 Heard learned counsel for the petitioner and
the State.

The petitioner is aggrieved by the order dated
15.06.2011 passed by the learned court below whereby
bail bonds of the petitioner has been cancelled and non-
bailable warrant of arrest has been issued against him.

Initially, F.I.R. was lodged against the
petitioner under Sections 448, 341, 323 and 354 of the
I.P.C. but the learned Magistrate, on finding that a case
under Section 376 of the I.P.C. has been made out
against the petitioner, committed this case to the Court
of Sessions. While passing the order of commitment, the
petitioner was taken into custody, despite the fact that
he had earlier been granted bail and had executed the



bail bonds. A petition was, though, filed on his behalf to allow him to continue on the same bail bonds, but the same was refused.

The petitioner, thereafter, challenged the aforesaid order before this Court vide Cr. Misc. No. 112 of 2003. A bail application also was filed before this Court which was allowed vide order dated 24.01.2003. The petitioner was released on bail on 29.01.2003.

The records further reveal that after the commitment, charge under Section 376 of the I.P.C. was framed on 17.12.2012 against the petitioner. The petition which was filed by him, seeking quashing of the criminal prosecution, was admitted by a Bench of this Court for hearing and the lower court records were summoned. The proceedings also had been stayed by the order of this Court.

However, when the aforesaid case was finally heard, a Bench of this Court vide order dated 3rd of September, 2010 was of the view that since the petitioner was granted bail, there was no need to keep the trial of the petitioner pending and hence rejected the petition, seeking quashing of the criminal proceeding against the petitioner. It was also observed by the Court that since the matter has remained pending for a long period, it would only be desirable that the trial court



proceed expeditiously in the matter and conclude the same without granting any unnecessary adjournment.

Learned counsel for the petitioner has drawn the attention of this Court to the fact that the aforesaid order was passed in absence of the petitioner and the petitioner was not informed about the same by his Advocate. He was under the impression that the stay was continuing and therefore there was no occasion for the petitioner to approach the court below for the needful.

Though notices were issued to him by the trial court but the records show that the notices were never received by him. Since the stay had been vacated and the petitioner had not appeared before the trial court by the order impugned, the bail bonds have been cancelled and non-bailable warrant of arrest has been directed to be issued.

Mr. Arun Kumar, learned counsel for the petitioner submits that if only he had any idea about the dismissal of his petition under Section 482 of the Code of Criminal Procedure (Cr. Misc. No. 112 of 2003), he would surely have appeared before the court below.

Considering the aforesaid submission of the petitioner, the order dated 15.06.2011 is set aside.

However, the petitioner is directed to be



appear before the court below within two weeks from the date of production / communication of a copy of this order and on his so surrendering before the court below, he shall be released on bail by the trial court after taking sufficient surety from him that he shall appear on all dates in the trial and shall not absent himself for more than two consecutive occasions. Should he do so, it shall be open for the trial court to cancel the bail of the petitioner.

With the aforesaid observation, this petition is disposed off.

(Ashutosh Kumar, J)

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