

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.33007 of 2018

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Md. Rajji Alam @ Md. Razi Alam S/o Late Shamim Alam, R/o Adarsh Nagar, Ward No. 16, P.S.- Araria, District- Araria.

.... Petitioner

Versus

1. The State of Bihar.
2. District Magistrate, Araria, District- Araria.
3. Superintendent of Police, Araria, District- Araria.
4. Station House Officer Cum Officer In Charge, P.S.- Araria (Town), District- Araria.

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Sanjeet Kumar

For the Opposite Party/s : Mr. Anant Kumar

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3. 22-11-2018

This application has been preferred for setting aside the order dated 25.04.2018 passed in Case No. 396(M) of 2018 by which the learned Sub-Divisional Magistrate, Araria has in exercise of his power under Section 110 of the Code of Criminal Procedure, 1973 (in short the “Cr.P.C.”) directed the petitioner to furnish two sureties of Rs. 1,00,000/- with a further condition that one of the sureties must be a Gazetted Officer. The surety submitted by the petitioner was rejected by the impugned order.

The petitioner has narrated in detail the facts and circumstances giving rise to the present case. The genesis of the whole dispute is a dispute of civil nature and there is specific statement of the petitioner that he has been



implicated in the present case with the help of the local S.H.O. Paragraph nos. 9, 10 and 11 of the application are the statements with regard to the nature of dispute which has not been controverted in the counter affidavit filed on behalf of the opposite party.

The impugned order nowhere shows any reason as to why such onerous condition of furnishing two sureties of Rs. 1,00,000/- that too with one of the surety being a Gazetted Officer have been imposed against the petitioner.

Learned counsel for the State has attempted to justify the order on the basis of the averments made in the counter affidavit, but after going through the same, this court finds that there is no reason provided therein in terms of Section 110 Cr.P.C. The only thing stated in the counter affidavit is that there was a recommendation of the Station House Officer giving the description of two other cases against the petitioner.

In the opinion of this court, the impugned order cannot sustain the test of law. Section 110 Cr.P.C. lays down the circumstances under which the Magistrate may require such person to execute a bond with sureties for his good behaviour. If at all the learned Magistrate wanted the



petitioner to execute a bond with sureties for his good behaviour, such onerous condition were not required to be imposed at the first instance.

The impugned order is, therefore, set aside. The learned Magistrate shall consider the matter afresh and pass a reasoned order thereon keeping in mind the scheme of the provisions of Code of Criminal Procedure, and while doing so, no onerous condition shall be imposed against the petitioner.

This application is, therefore, allowed to the extent indicated above.

(Rajeev Ranjan Prasad, J)

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