

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36963 of 2017

Arising Out of PS.Case No. -81 Year- 2017 Thana -KHAGARIA District- KHAGARIA

=====

Mohmad Feko Sah, Son of Mohmad Eslam Sah, Resident of Village-
Gaurashakti, P.S.- Muffassil, District- Khagaria.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Chandan Pandit, Son of Arun Pandit.
3. Gorakh Pandit @ Deepak Pandit, Son of Arjun Pandit,
4. Arbind Pandit, Son of Bhumi Pandit. 2 to 4 are resident of Village-
Ranganj, Gaura Shakti, P.S.- Muffasssil, District- Khagaria.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Anil Kumar Choudhary

For the Opposite Party/s : Mr. Smt. Pushpa Sinha

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

4 17-01-2018

Learned counsel for the petitioner, at the outset

submits that he does not press the petition so far as opposite party

No. 4 is concerned.

The present petition is directed against the order dated 29.05.2017 passed by the learned 1st Additional District & Sessions Judge, Khagaria in Sessions Trial No. 203 of 2017, whereby the bail bonds filed by opposite party Nos. 2 and 3 were accepted and the application of the petitioner seeking rejection of the bail of opposite party Nos. 2 to 4 was rejected.

The opposite party Nos. 2 to 4 were in custody in connection with Khagaria (Muffassil) P.S. Case No. 81 of 2017



instituted for the offences under Sections 147, 148, 149, 326, 307, 504, 506 of the Indian Penal Code and Section 27 of the Arms Act from 09.02.2017. Till about 11.05.2017, the charge-sheet was not submitted against them entitling them for statutory bail under Section 167(2) of the Code of Criminal Procedure, 1973.

On application of the opposite parties, learned Chief Judicial Magistrate directed for release of the opposite party Nos. 2 to 4 subject to their furnishing bond in the sum of Rs. 7000/- with two sureties of the like amount but with a condition that one of the bailers would be a government servant and the other would be a public representative.

Be it noted that the Chief Judicial Magistrate committed the case to the Courts of Sessions on 18.05.2017 and it was received in the Court of the Sessions on 19.05.2017.

The learned Additional District & Sessions Judge, Khagaria vide the order dated 29.05.2017 found the conditions imposed by the Chief Judicial Magistrate to be absolutely untenable and directed for release of the opposite party Nos. 2 to 4 on acceptance of their bail bonds.

Learned counsel for the petitioner has submitted that once the bail bonds were not accepted, the opposite parties would not be deemed to have been released and in that view of the



matter, a fresh application ought to have been filed by the opposite parties before the learned 1st Additional Sessions Judge, challenging the aforesaid conditions put by the learned Chief Judicial Magistrate. From the impugned order, it does not appear as to whether any application was filed on behalf of opposite parties before the learned Additional Sessions Judge, challenging the imposition of conditions for grant of bail. However what appears from the records is that the opposite parties were granted default bail by the Chief Judicial Magistrate but the bail bonds with respect to opposite party Nos. 2 and 3 were not accepted for non-fulfillment of the condition imposed. On face of it, the conditions imposed by the learned Chief Judicial Magistrate was not correct as the whole purpose of statutory bail would have stood defeated by such onerous conditions. Times without number, it has been held that imposition of conditions which are very onerous to be complied with, amounts to deemed rejection of bail. The statutory bail is an indefeasible right of the accused and it could not have been taken away in such a casual manner.

Though there have been some procedural irregularities but considering the facts of this case, no interference is required with the order dated 29.05.2017.

As such, the present petition for cancellation of



bail of opposite party Nos. 2 and 3 is rejected.

However, it is observed that the case be tried as expeditiously as possible.

(Ashutosh Kumar, J)

Shageer/-

U		T	
---	--	---	--

