

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.69428 of 2018**

Arising Out of PS. Case No.-125 Year-2017 Thana- BUNIYAD GANJ District- Gaya

Lakhan Das @ Mahant Lakhan Das Son of Late Jamuna Das, Resident of
Vill- Udasin Pakki Sangat, P.S.- Buniyadganj, Distt- Gaya.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Suresh Mishra

For the Opposite Party/s : Mr. Gauri Shankar Gupta

**CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
C.A.V. JUDGMENT**

Date : 17-05-2019

Heard learned counsels for the parties.

Petitioner, by means of this application under section 482 of the Code of Criminal Procedure, has invoked the inherent jurisdiction of this Court with prayer to quash the order dated 10.08.2018 passed by the learned Sessions Judge, Gaya in Misc. Case No. 198 of 2018, whereby and whereunder the prayer for extension of time granted for surrender vide order dated 04.04.2018 in A.B.P. No. 160 of 2018, has been rejected.

Learned counsel appearing for the petitioner submits that petitioner was granted anticipatory bail vide order dated 04.04.2018 passed by the Sessions Judge in A.B.P. No. 160 of 2018 with two weeks time for surrender. It



is further submitted that Gaya Kotwali P.S. Case No. 158 of 2018 was lodged against the petitioner and other accused persons on 22.03.2018. In that case petitioner was granted bail by this Hon'ble Court vide order dated 06.09.2018 passed in Cr. Misc. No. 40036 of 2018. On account of his implication in the above case, he could not surrender within the stipulated time. Thereafter he filed a petition for extension of the time granted for surrender, but the learned Sessions Judge without considering the above facts has rejected the same. He, therefore, submits that the order impugned is fit to be quashed.

Heard the learned counsels appearing for the parties and perused the materials available on the record. On perusal of the impugned order, it appears that the learned Sessions Judge found that the petitioner deliberately avoided to surrender within the stipulated time due to mere fear of arrest in the other case, and as such, has rejected the prayer for extension of time. Section 438 of the Code of Criminal Procedure provides that when any person has reason to believe that he may be arrested on any accusation of having committed a non-bailable offence, he may apply for grant of anticipatory bail. In the present case, petitioner was



made accused in Gaya Kotwali P.S. Case No. 158 of 2018 dated 22.03.2018, and he had reasons to believe that he may be arrested, and as such, he did not surrender within the stipulated time. It was not a mere fear due to which he did not surrender within the stipulated time.

In view of the discussions made above, this Court finds that the order dated 10.08.2018 passed by the learned Sessions Judge, Gaya in Misc. Case No. 198 of 2018, whereby and whereunder the prayer for extension of time granted for surrender vide order dated 04.04.2018 in A.B.P. No. 160 of 2018 has been rejected, is not sustainable in the eye of law and the same is, hereby, quashed. The matter is remitted back to the Court below for passing the order afresh.

The application is allowed with the above directions/observations.

(Arvind Srivastava, J)

mcv/-

AFR/NAFR	NAFR
CAV DATE	02.05.2019
Uploading Date	17.06.2019
Transmission Date	17.06.2019

