

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3697 of 2015

Arising Out of PS. Case No.-164 Year-2012 Thana- KADWA District- Katihar

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Md. Ali Reza Son of Md. Master Gyasuddin Resident of Village-Baluganj,
P.S-Kadwa, District-Katihar

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary (Home Police)Department of Home, Government of Bihar
Patna
3. The Superintendent of Police Katihar
4. Officer In Charge of Balia Belone Police Station Katihar
5. The Investigating Officer of Kadwa (Balial-Belone) P.S. Case No. 164/2012
Katihar
6. Bhagwan Gupta Son of Late Simlu Prasad Gupta Resident of village-Bakeri,
P.S.-Piro, District-Bhojpur, presently Government Sharab Dukan, Balial-
Belone, P.S-Balia-Belone, District-Katihar.

... .. Opposite Party/s

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Appearance :

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

For the Opposite Party/s : Mr.Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 01-07-2019

Heard learned counsel for the parties.

2. Petitioner is accused in connection with Kadwa
(Balial-Belone) P.S.Case No.164 of 2012 registered against
unknown under Sections 392 and 395 I.P.C.

3. According to FIR on 17.04.2012, four unknown
motorcycle born criminals came and three of them entered into the
shop of the informant and looted away the articles. After
investigation, the police submitted chargesheet against others



including the petitioner and accordingly cognizance was taken by the impugned order dated 08.07.2013 against the petitioner also.

4. The impugned order has been challenged on the ground that the petitioner was remanded to judicial custody on 01.02.2012 in connection with Balia Belone P.S. Case No.35 of 2012 and was released on bail on the order of the Hon'ble High Court on 14.05.2012, therefore, on the date of occurrence, the petitioner was in judicial custody and was in jail whereas co-accused Jamil Akhtar confessed before the police that three persons who had gone inside the shop included the petitioner also.

5. Contention is that there is no material collected during investigation showing allegation against the petitioner of conspiracy. Therefore, apparently, the petitioner has been falsely implicated.

6. Learned counsel for the State submits that the material brought on the record by the petitioner showing the fact that he was in custody was not before the learned court below while taking cognizance. Hence, the impugned order cannot be interfered on the basis of probable defence of the accused.

7. Considering the facts and circumstances, this application is dismissed as devoid of any merit for the reason that the material brought during investigation justifies the order of



cognizance. However, the petitioner would be at liberty to raise his defence at the stage of framing of the charges.

8. With the aforesaid observation, this application stands disposed of.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.07.2019
Transmission Date	05.07.2019

