

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.80093 of 2019

Arising Out of PS. Case No.-168 Year-2018 Thana- SALAKHUA District- Saharsa

1. Binit Kumar @ Munna (M), age 21 years, S/o Keshrinand @ Varun Kumar Resident of Village Kalotva, P.S.- Salkhua, District- Saharsa.
2. Amit Kumar (M), age 20 years, S/o Arun Kumar Arun, Resident of Village Kalotva, P.S.- Salkhua, District- Saharsa.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner : Mr. Suni Kumar @ S.K., Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 20-12-2019

Heard learned counsel for the petitioners and learned APP for the State.

2. The petitioners seek pre-arrest bail in connection with Salkhua PS Case No. 168 of 2018 dated 18.08.2018 instituted under Sections 147, 148, 149, 341, 323, 324, 307, 379, 504 and 506 of the Indian Penal Code.

3. The petitioners were initially accused, along with seven other persons, but charge sheet was submitted only against two co-accused and not the petitioners.

4. Pursuant thereto, the ACJM, IV, Saharsa in Criminal Case No. 2336 of 2018, arising out of Salkhua PS Case No. 168 of 2018, by order dated 19.11.2018, after accepting the charge sheet has taken cognizance against only the said two charge sheeted accused and had discharged the petitioners along with three other co-accused. It was submitted that at the relevant time, against the



remaining two co-accused, the police had shown the investigation as continuing. Thereafter, it appears that the police sought warrant of arrest from the Court on the plea that the petitioners were avoiding arrest and the Court had, thus, issued warrant of arrest against the petitioners by order dated 29.01.2019.

5. Learned counsel for the petitioners submitted that they were unaware of such development and only when the police came to their house seeking their arrest, upon verification of the records, they could be aware of the order dated 29.01.2019.

6. Learned APP submitted that there is a judicial order issuing warrant of arrest against the petitioners and unless the same is interfered with, the present application may not be maintainable in the eyes of law.

7. Having considered the matter, the Court finds substance in the contention of learned APP. Though, on merits, the Court finds that the petitioners have made out a case for granting them protection in view of the fact that the police had not sent them for trial and the Court has discharged them and, thus, the requisition from the police that the petitioners being named accused were avoiding arrest, itself being not maintainable for the reason, that if at all, the police wanted to do further investigation, they were required to seek the permission of the Court in view of



the fact that there was a specific order discharging the petitioners. Had there been no order to such effect, the police on their own could have conducted further enquiry and then if the petitioners avoided presenting themselves before the police, such a request could be made by the police to the Court concerned, but without any such factual background indicated in the order dated 29.01.2019, issuing warrant of arrest, in the tentative view of the Court, may not be justifiable/ sustainable.

8. Be that as it may, in the present petition which is under Section 438 of the Code of Criminal Procedure, 1973, as has rightly been submitted by learned APP, no relief can be granted to the petitioners in view of there being a judicial order issuing warrant of arrest.

9. In view thereof, the application stands disposed off with liberty to the petitioner to move before the appropriate forum, in accordance with law.

(Ahsanuddin Amanullah, J)

Ranjeet/Rahul

AFR/NAFR	
U	
T	

