

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.12516 of 2020

Arising Out of PS. Case No.-62 Year-2019 Thana- RAJEPUR District- East Champaran

Suraj Paswan Son of Late Sukdev Paswan Resident of Village - Salempur,
P.S. - Rajepur, District - East Champaran.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner : Mr.Umesh Chandra Verma, Advocate
For the Opposite Party : Mr.Ishrat Bano, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

3 07-07-2020 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State via video
conferencing.

This application has been filed by the petitioner for
grant of pre-arrest bail in connection with Rajepur P.S. Case
No.62 of 2019 registered *inter alia* under Section 302 of the
Indian Penal Code.

A similar prayer made under Section 438 of the Code
of Criminal Procedure by the petitioner before the learned 6th
Additional Session Judge, East Champaran, Motihari in
Anticipatory Bail Petition No.2102 of 2019 has been rejected,
vide order dated 27.09.2019.

On perusal of the aforesaid order dated 27.09.2019, I
find that earlier case diary was called for and a reminder order



for submission of the case diary was also issued, but since the case diary was not submitted by the investigating officer, the learned 6th Additional Session Judge, Motihari rejected the application taking into consideration the gravity of the offence.

In my opinion, no fault in the order of the court below could have been found, if the prayer for grant of pre-arrest bail would have been rejected at the first instance considering the gravity of the offence and the allegations made against the petitioner in the FIR. But, if the court below had summoned the case diary and adjourned the pre-arrest bail application for consideration on the basis of materials collected during investigation, there can be no justification as to why the application was rejected without looking into the materials collected during investigation. The Code of Criminal Procedure gives ample power to the court to compel the investigating officer of a case to comply with the orders passed by the court of competent jurisdiction. Instead of resorting to those procedures, the learned Judge chose to conveniently dismiss the application and get rid of the case. The manner in which the learned Judge has rejected the application smacks of judicial arbitrariness and waiver of jurisdiction at the mercy of police.

Accordingly, the order dated 27.09.2019 passed by the



learned 6th Additional Session Judge, East Champaran, Motihari in Anticipatory Bail Petition No.2102 of 2019 is set aside. The matter is remanded back to his court to hear the application afresh and pass order in accordance with law only after looking into the case diary and hearing the parties.

With the aforesaid observations and direction, the application is disposed of.

(Ashwani Kumar Singh, J.)

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