

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.36079 of 2020**

**In
CRIMINAL MISCELLANEOUS No.27968 of 2020**

Arising Out of PS. Case No.-46 Year-2020 Thana- RUDRAPUR District- Madhubani

Jagnarayan Mahto (Male) aged about 50 years, Son of Late Rup Lal Mahto
Resident of Village - Mahrail, P.S.- Rudrapur, Distt.- Madhubani.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Ms.Namrata Mishra, Advocate

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

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

2 23-12-2020 Learned counsel for the petitioner undertakes to remove all the defects as pointed out by office within four weeks after start of normal functioning of the Court.

Heard learned counsel for the petitioner and Mr. Gauri Shankar Gupta, learned A.P.P. for the State.

This application has been preferred seeking modification and clarification of the order dated 02.11.2020 passed in Cr. Misc. No. 27968/2020 by which this Court while granting regular bail to the petitioner had placed a further condition in the following terms:

And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner.”



Learned counsel for the petitioner submits that when the bail bonds were submitted by the petitioner the learned Judicial Magistrate called for a report from the Superintendent of Police, Jhanjharpur who reported that the petitioner had two criminal antecedents. Learned counsel submits that in paragraph '3' of his application (Cr. Misc. No. 27968/2020) the petitioner has already declared about those cases and in fact the report of the Superintendent of Police, Jhanjharpur was pointing out that only two cases are there against the petitioner whereas the petitioner had declared three cases against him.

Learned counsel further submits that despite this position even as the petitioner produced a xerox copy of the application filed before the learned court, the learned court below did not look into the same and in a mechanical manner without applying his judicious mind rejected the bail bond of the petitioner.

Learned counsel submits that the import of the further condition stated in the order dated 02.11.2020 has not been appreciated by the learned Magistrate. This Court has placed the condition putting a responsibility upon the learned court below to verify the criminal antecedent and the order clearly indicates that in case at any stage it is found that the petitioner has concealed his criminal antecedent the court below shall take steps for cancellation of bail bond of the petitioner.



Thus, in the given condition this Court nowhere states that prior to accepting the bail bond the learned Magistrate has to verify the criminal antecedent of the petitioner and what is required on the part of the learned court below is to verify the criminal antecedent at any stage and only in case of concealment the court below could have taken steps for cancellation of bail bond but instead of doing so, the learned Magistrate firstly delayed acceptance of bail bond of the petitioner and then rejected the same without even verifying as to whether there is any 'concealment' on the part of the petitioner.

It is submitted that the word 'concealed' has not been duly understood by the learned court below. For this purpose either the copy of the petition filed by the petitioner should have been relied upon or the learned court would have called for a copy of the petition from this Court.

It is further submitted that ordinarily three copies of bail petitions are filed in this Court and one copy thereof is required to be sent to the court of learned Magistrate together with the order passed by this Court, but during this pandemic period when the courts are not functioning with full strength and the learned courts are acting on the basis of the copy of the orders available on the pandemic site of the High Court, the learned Magistrate is not justified in rejecting the bail bond of the petitioner. It has resulted



in unlawful detention of the petitioner for more than one and half months even after the bail granted by this Court.

Mr. Gauri Shankar Gupta, learned A.P.P. for the State has not opposed this application and in the opinion of this Court he has rightly done so.

This Court finds itself totally disturbed after looking into the kind of rejection of bail bond done by the learned Magistrate which has resulted in unlawful detention of the petitioner for more than one and half month. Apparently, the learned court below has not applied it's judicious mind and has failed to appreciate as to the true and correct meaning of the word 'concealed'. Unless the learned Magistrate had satisfied himself with the fact as to what were the averment of the petitioner in the application filed before this Court, the learned Magistrate could not have taken a view that the petitioner has concealed his criminal antecedent. In such circumstance, the learned court could have either gone into the xerox copy of the petition filed before the Court to satisfy itself or the learned court could have called for an affidavit. The learned court has though taken the xerox copy of the petition on the record but has not at all looked into paragraph '3' thereof. This approach on the part of a judicial officer would only be termed as a casual approach and by no stretch of imagination it may be justified.



A single day detention of the under-trial prisoner after grant of bail by this Court and when he has submitted the bail bonds in compliance of the court's order even as there is no other impediment in the way of the petitioner is nothing but a case of failure of justice and this has occasioned in this case because of the rejection of the bail bond on 02.12.2020 as informed to this Court.

This Court finds no reason to modify its own order dated 02.11.2020. The learned court below is directed to accept the bail bond of the petitioner after being satisfied immediately and on the same day issue a release order without any delay.

This application stands disposed off accordingly.

Let a copy of this order be communicated through Fax as well as E-mail to the learned court below today itself.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

