

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22071 of 2021

In
CRIMINAL MISCELLANEOUS No.44222 of 2019

Arising Out of PS. Case No.-82 Year-2017 Thana- SINGHIYA District- Samastipur

Raja Ram Mandal S/O Ramavatar Mandal Resident Of Village Bela, P.S.-
hathauri, District-Samastipur.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

with
CRIMINAL MISCELLANEOUS No. 25634 of 2021
In
CRIMINAL MISCELLANEOUS No.20180 of 2020

Arising Out of PS. Case No.-55 Year-2019 Thana- GOVERNMENT OFFICIAL COMP.
District- Muzaffarpur

ANITA DEVI Wife of Late Sant Kumar Pandey Resident of Village -
Bheriyahi, P.S.- Kanti, District - Muzaffarpur (Bihar)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with
CRIMINAL MISCELLANEOUS No. 35754 of 2021
In
CRIMINAL MISCELLANEOUS No.40540 of 2015

Arising Out of PS. Case No.-95 Year-2015 Thana- CHARPOKHARI District- Bhojpur

Mithilesh Kumar Singh @ Mithilesh Singh @ Guddu Singh S/o Baliram
Singh R/o village- Haripur, P.S.- Koilwar, District- Bhojpur, At present
resident of Muhalla- L.T.- 12 Qr No. 50, P.S.- Marafari (Bokaro), District-
Bokaro

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sakuntala Devi W/o Mithalesh Singh, D/o Banka Singh R/o village- Kaup,
P.S.- Charpokhari, District- Bhojpur

... .. Opposite Party/s



with
CRIMINAL MISCELLANEOUS No. 35770 of 2021
In
CRIMINAL MISCELLANEOUS No.52876 of 2019

Arising Out of PS. Case No.-36 Year-2019 Thana- BEGUSARAI COMPLAINT CASE
District- Begusarai

1. Md. Mojaheed Hussain Son Of Md Moseem Marhum Residetn of Udaipur, P.S.- Rosera, District- Samastipur.
2. Hasina Begum Wife of Md. Mojaheed Hussain Resident of Udaipur, P.S.- Rosera, District- Samastipur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Mehnaz Khatoon Wife of Md. Ajmarul Hussain and Daughter of Md. Yunus Alam Resident of Udaipur, P.S.- Rosera, District- Samastipur. At present resident of Village- Khodawanpur, P.S.- Khodawanpur, District- Begusarai.

... .. Opposite Party/s

with
CRIMINAL MISCELLANEOUS No. 35812 of 2021
In
CRIMINAL MISCELLANEOUS No.86270 of 2019

Arising Out of PS. Case No.-252 Year-2019 Thana- BASANTPUR District- Siwan

Chandan Kumr Byahut S/O Late Rama Shankar Byahut R/o village- Maghar, P.S.- Bhagwanpur Hat, District- Siwan

... .. Petitioner/s

Versus

1. The State of Bihar
2. The South Bihar Power Distribution Company Ltd. Bihar

... .. Opposite Party/s

with
CRIMINAL MISCELLANEOUS No. 39088 of 2021
In
CRIMINAL MISCELLANEOUS No.86484 of 2019

Arising Out of PS. Case No.-638 Year-2017 Thana- FORBESGANJ District- Araria

1. MD. SATTAR Son of Late Jaan Mohammad (Representative of Ward Member No. 13), Resident of Village - Rampur Uttar Ward No. 13, P.S.- Forbesganj, District - Araria.



2. Md. Ibrar @ Md. Ibrar Alam @ Md. Abrar Alam Son of Late Md. Alauddin Resident of Village - Rampur Uttar, Ward No. 12, P.S.- Forbesganj, District - Araria.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with
CRIMINAL MISCELLANEOUS No. 43699 of 2021
In
CRIMINAL MISCELLANEOUS No.13508 of 2020

Arising Out of PS. Case No.-293 Year-2018 Thana- KHAJEKALA District- Patna

RANJAN KUMAR Son of Ram Pravesh Mahato @ Chuhua Resident of Shish Mahal Hamapar, P.S - Khajekalan, District - Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with
CRIMINAL MISCELLANEOUS No. 47811 of 2021
In
CRIMINAL APPEAL (SJ) No.2192 of 2020

Arising Out of PS. Case No.-89 Year-2020 Thana- NAUTAN District- West Champaran

BHIM ALAM Son of Saiyad Mian Resident of Village- Dhumnagar Kachhari Tola, Ward No. 10, P.S.- Nutan, District- West Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with
CRIMINAL MISCELLANEOUS No. 55435 of 2021
In
CRIMINAL MISCELLANEOUS No.23707 of 2021

Arising Out of PS. Case No.-145 Year-2020 Thana- RAJEPUR District- East Champaran

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1. BHAGWAT RAI @ BHAGWATI RAI Son of Late Uchit Rai Resident of Village - Gosaipur, P.S. - Rajepur, District - East Champaran.
2. Majhi Rai @ Mojhi Rai Son of Late Uchit Rai Resident of Village -



Gosaipur, P.S. - Rajepur, District - East Champaran.

3. Ram Rekha Rai Son of Jai Prasad Rai Resident of Village - Gosaipur, P.S. - Rajepur, District - East Champaran.
4. Ashok Rai @ Ashok Kumar Son of Late Suraj Rai Resident of Village - Gosaipur, P.S. - Rajepur, District - East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with
CRIMINAL MISCELLANEOUS No. 55460 of 2021
In
CRIMINAL MISCELLANEOUS No.37145 of 2020

Arising Out of PS. Case No.-263 Year-2019 Thana- BAKHTIARPUR District- Saharsa

1. BABY KHATOON Daughter of Late Mojeem Resident of Village - Hussain Chowk, Police Station - Simri Bakhtiyarpur, District - Saharsa.
2. FARIDA KHATOON Wife of Late Mojeem Resident of Village - Hussain Chowk, Police Station - Simri Bakhtiyarpur, District - Saharsa.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 22071 of 2021)

For the Petitioner/s : Mr. Apurva Kumar
For the Opposite Party/s : Mr. Shyam Kumar Singh

(In CRIMINAL MISCELLANEOUS No. 25634 of 2021)

For the Petitioner/s : Mr. Tejendra Sinha
For the Opposite Party/s : Ms. Indu Kumari Srivastava

(In CRIMINAL MISCELLANEOUS No. 35754 of 2021)

For the Petitioner/s : Mr. Navin Kumar Singh
For the Opposite Party/s : Ms. Indu Kumari Srivastava

(In CRIMINAL MISCELLANEOUS No. 35770 of 2021)

For the Petitioner/s : Mr. Shaishav Kumar
For the Opposite Party/s : Ms. Indu Kumari Srivastava

(In CRIMINAL MISCELLANEOUS No. 35812 of 2021)

For the Petitioner/s : Mr. Bijay Prakash Singh
For the Opposite Party/s : Mr. Renu Kumari

(In CRIMINAL MISCELLANEOUS No. 39088 of 2021)



For the Petitioner/s : Mr. Anil Prasad Singh
For the Opposite Party/s : Mr. Jharkhandi Upadhyay

(In CRIMINAL MISCELLANEOUS No. 43699 of 2021)
For the Petitioner/s : Mr. Harish Kumar
For the Opposite Party/s : Mr. Md. Iftekhar Mahmood

(In CRIMINAL MISCELLANEOUS No. 47811 of 2021)
For the Petitioner/s : Mr. Sanjeev Kumar Shrivastava
For the Opposite Party/s : Mr. Nirmal Kumar Sinha

(In CRIMINAL MISCELLANEOUS No. 55435 of 2021)
For the Petitioner/s : Mr. Uday Prakash Sharma
For the Opposite Party/s : Mr. Chandra Sen Prasad Singh

(In CRIMINAL MISCELLANEOUS No. 55460 of 2021)
For the Petitioner/s : Mr. Uday Chand Prasad
For the Opposite Party/s : Mr. Shyam Kumar Singh

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA
ORAL JUDGMENT
Date : 21-02-2022

1. An application has been moved for modification of the order dated 24.10.2019 seeking extension of time for submitting bail bonds.

2. By order dated 24.10.2019, this court direct as under:-

“In view of the facts as stated above, this application is allowed. Let the petitioner, above named, in the event of his arrest or surrender before the court below within six weeks be released on bail on furnishing bail bond of Rs.25,000/- (Rupees Twenty Five Thousand) each with two sureties of the like amount to the satisfaction of the learned Additional Chief Judicial Magistrate-V, Rosera, Samastipur in connection with



Singhia Police Station Case No.82 of 2017, subject to the condition laid down under Section 438 (2) of the Code of Criminal Procedure and further condition is that one of the bailor of the petitioner shall be a local person having sufficient immovable property within the jurisdiction of the court concerned”.

3. Learned counsel submits that as the court has directed the petitioners to surrender within six weeks however he was under treatment, he could not surrender before the lower court below within the stipulated period. Learned counsel further submits that the petitioner has been granted anticipatory bail and bail ought to be allowed to continue till disposal of the trial. He therefore submits that the order requires to be modified.

4. I have considered the submission.

5. Apparently the petitioner has been granted anticipatory bail with observation that if he is arrested, the bail bond on sum of Rs.25,000/- with a two surety. However, the words used in the order seem to have created a confusion.

6. Anticipatory bail in terms of section 438 Cr.P.C. means that a person shall not be arrested and if the I.O. requires him to be present he may ask him to submit a bond in terms of section 438 (2) Cr.P.C. i.e. he may ask for bail bond so



that the accused presence is secured for investigation or for some other purposes including at the time of filing of the charge sheet.

7. Be that as it may, the concept of pre-arrest bail in terms of Section 438 Cr.P.C. is there is no occasion for a person who has been granted anticipatory bail to surrender before any court or before any police authority. He is free from arrest, subject that any specific conditions laid down by the Court. The constitution bench of the Supreme Court in *Sushila Agrawal Vs. State of NCT* in **S.C. 2020 (5) SC Page 1** has at length discussed the meaning and scope of anticipatory bail and following the earlier constitution bench judgment passed in *Gorbaksh Singh Sibhia Vs. the State of Punjab* **(1980) 2 SCC 565**. In the separate concurrent judgment rendered by Hon'ble Justice S. Ravindra Bhat.J. it was stated as under:-

98. The court which grants the bail has the right to cancel the bail according to the provisions of the General Clauses Act but ordinarily after hearing the Public Prosecutor when the bail order is confirmed then the benefit of the grant of the bail should continue till the end of the trial of that case. The judgment in Salauddin Abdul Samad Shaikh is contrary to legislative intent and the spirit of the very provisions of the anticipatory bail itself and has resulted in an



artificial and unreasonable restriction on the scope of enactment contrary to the legislative intention.

100. Section 438 CrPC does not mention anything about the duration to which a direction for release on bail in the event of arrest can be granted. The order granting anticipatory bail is a direction specifically to release the accused on bail in the event of his arrest. Once such a direction of anticipatory bail is executed by the accused and he is released on bail, the court concerned would be fully justified in imposing conditions including direction of joining investigation.

102. In pursuance to the order of the Court of Session or the High Court, once the accused is released on bail by the trial court, then it would be unreasonable to compel the accused to surrender before the trial court and again apply for regular bail.

103. The court must bear in mind that at times the applicant would approach the court for grant of anticipatory bail on mere apprehension of being arrested on accusation of having committed a non-bailable offence. In fact, the investigating agency concerned may not otherwise arrest that applicant who has applied for anticipatory bail but just because he makes an application before the court and gets the relief from the court for a limited period and thereafter he has to surrender before the trial court and only thereafter his bail application can be considered and



life of anticipatory bail comes to an end. This may lead to disastrous and unfortunate consequences. The applicant who may not have otherwise lost his liberty loses it because he chose to file application of anticipatory bail on mere apprehension of being arrested on accusation of having committed a non-bailable offence. No arrest should be made because it is lawful for the police officer to do so. The existence of power to arrest in one thing and the justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. This finding of the said judgment (supra) is contrary to the legislative intention and law which has been declared by a Constitution Bench of this Court in Sibbia case.

104. The validity of the restrictions imposed by the Supreme Court namely, that the accused released on anticipatory bail must submit himself to custody and only thereafter can apply for regular bail; this is contrary to the basic intention and spirit of Section 438 CrPC. It is also contrary to Article 21 of the Constitution. The test of fairness and reasonableness is implicit under Article 21 of the Constitution of India. Directing the accused to surrender to custody after the limited period amounts to deprivation of his personal liberty.

105. It is a settled legal position crystallized by the Constitution Bench of



this Court in Sibbia case that the courts should not impose restrictions on the ambit and scope of Section 438 CrPC which are not envisaged by the legislature. The Court cannot rewrite the provision of the statute in the garb of interpreting it.

106. It is unreasonable to lay down strict, inflexible and rigid rules for exercise of such direction by limiting the period of which an order under this section could be granted. We deem it appropriate to reproduce some observations of the judgment of the Constitution Bench of this Court in Sibbia case.

8. In view thereof, it is apparent that the anticipatory bail granted by this court would continue till disposal of the trial and the petitioner cannot be forced to surrender before the trial court and obtained a fresh bail. The same view has been expressed in the aforesaid Constitutional Bench by Hon'ble Justice M.R. Shah, who passed a concurrent judgment.

9. Keeping in view of the above, I refrain from modifying the order passed earlier. Even otherwise in view of specific bar contained under section 362 Cr.P.C. the earlier order cannot be modified/reviewed.

10. The application therefore does not require



further clarification except that it is made clear that the petitioners in the aforesaid cases shall not be arrested nor they shall be required to surrender themselves before the concerned Magistrate or before the concerned police station and in the event of being arrested, the concerned police official shall take bail bonds from them instead of keeping them in jail. They will remain on anticipatory bail till the trial is concluded.

(Sanjeev Prakash Sharma, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

