

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11469 of 2021**

Arising Out of PS. Case No.-2120 Year-2005 Thana- VAISALI COMPLAINT CASE
District- Vaishali

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ALOK KUMAR Son of Shri Ram Narayan Gupta Resident of Biddupur
Bazar, P.S.- Biddupur Bazar, District- Vaishali.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ansul, Advocate
For the Opposite Party/s : Mr. Narsingh Tanti, APP

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**CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER**

7 16-11-2022 Heard learned counsel for the parties.

The instant application has been preferred against the order dated 10.9.2020 whereby the Criminal Appeal no. 11 of 2020 preferred by the appellant-petitioner was dismissed in default. The order impugned dated 10.9.2020 is quoted hereinbelow:

“Despite repeated calls, no one appears on behalf of the appellant. From the record, it also appears that no one is appearing on behalf of the appellant since last four dates. Hence, the present criminal appeal is dismissed in default due to non-appearance of appellant.”

Learned counsel for the appellant-petitioner relying on the ratio of the judgment of the Hon’ble Supreme Court in the case of **Bani Singh & Ors. Vs. State of U.P [(1996) 4 SCC**



720] as also section 384 of the Code of Criminal Procedure submits that the learned court below in dismissing the appeal in default has committed an error. The same be restored and direction be given for the same to be heard and decided on its own merits.

Having heard learned counsel for the parties and taking into consideration the facts and circumstances of the case including the ratio of the judgment relied-on on behalf of the appellant-petitioner, the order dated 10.9.2020 impugned herein is set aside. The Criminal Appeal no. 11 of 2020 (Alok Kumar Vs. State of Bihar) pending in the court of learned Sessions Judge, Vaishali is restored with a direction to the learned court below to hear and decide the same on its merits.

The instant application stands allowed with the above observations and directions.

(Partha Sarthy, J)

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