

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.62732 of 2021

Arising Out of PS. Case No.-428 Year-2017 Thana- MINAPUR District- Muzaffarpur

1. Fula Devi, W/o Rajendra Rai, Resident of Village- Vishunpur Pandey, P.S.- Minapur, District- Muzaffarpur
2. Rajendra Rai, Son of Late Lal Bahadur, Resident of Village- Vishunpur Pandey, P.S.- Minapur, District- Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar

. ... Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Manoj Kumar, Advocate
For the Opposite Party/s : Mr.Pranav Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

2 18-08-2022 Heard learned counsel for the petitioners and learned
APP for the State.

In this case, the petitioners were ordered to be released on bail in case of surrender or arrest within 30 days and on furnishing bail bonds vide order dated 12.07.2018 passed by learned 1st Additional Sessions Judge, Muzaffarpur in connection with Minapur P.S. Case No. 420 of 2017 registered under Section 366 A of the Indian Penal Code. But the petitioners could not surrender before the learned court below within 30 days for the reasons mentioned in the petition. Thereafter, the petitioners moved before the learned Sessions Judge, Muzaffarpur for extension of time of surrender, but the learned Sessions Judge rejected their prayer vide impugned order dated 15.09.2021 passed in Cr. Misc. No. 61 of 2021.

The learned counsel for the petitioners submits that



the petitioners are quite old and could not surrender before the learned court below in terms of the order of the court due to circumstances beyond their control. The victim girl did not name the petitioners in her statement recorded under Section 164 Cr.P.C and considering this fact the petitioners were granted anticipatory bail. But the learned court below did not consider the facts and circumstances of the case and refused to extend the time period for surrender. Hence, the impugned order is not sustainable and the same be set aside.

Having considered the matter, I am of the opinion that grant of anticipatory bail under the provisions of Section 438 of the Code of Criminal Procedure means that a person would not be taken into custody if he is ready and willing to furnish the bail bond and for this reason when anticipatory bail is granted insistence on surrender within some stipulated period, it is not proper. Meaning thereby grant of pre-arrest bail means only in case of arrest, the person is required to furnish bail bond. Asking such person to surrender before the court in a fixed period is putting unnecessary condition curtailing his liberty.

In view of the aforesaid discussions, I think the learned Sessions Judge missed the point and logic behind grant of bail under Section 438 Cr.P.C. when he rejected the prayer for



extension of time for surrender as the same was not in time with the purpose for which the bail was granted.

Hence, the impugned order is set aside and the order dated 12.07.2018 of the learned 1st Additional Sessions Judge granting anticipatory bail to the petitioners be considered as still effective without any stipulated time period of surrender. Further in case of arrest, the conditions as mentioned under the aforesaid order dated 12.07.2018 would come into effect. In case the petitioners choose to appear before the learned trial court, it would accept the bail bonds considering the order dated 12.07.2018 as if there was no stipulation of 30 days for surrender.

With the aforesaid observations/directions, this petition stands disposed of.

(Arun Kumar Jha, J)

V.K.Pandey/-

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