

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.183 of 2022

Arising Out of PS. Case No.-671 Year-2021 Thana- MUZAFFARPUR SADAR District-
Muzaffarpur

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DIWAKAR @ MOHAN SINGH S/o Late Devendra Prasad Singh R/o
Bhagwanpur Chouk, P.S.- Sadar, District- Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Sect., Dept. of Home, old Sect., Govt. of Bihar, Pata Bihar
2. The Senior Superintendent of Police, Muzaffarpur Bihar
3. Dy. S.P. Muzaffarpur Bihar
4. The S.H.O. Sadar Police Station Bhagwanpur, Muzaffarpur Bihar
5. Prashant Kumar @ Gulu Kumar S/o Paras Nath R/o village- Madhaul, P.S.- Turki, District- Muzaffarpur
6. Gautam Kumar S/o Dilip Kumar Pandey R/o village- Madhaul, P.S.- Turki, District- Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jai Prakash Verma
For the Respondent/s : Mr. Suman Kumar Jha, AC to AAG 3

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 28-08-2023 Heard learned Counsel for the parties concerned.

2. The petitioner has filed the present writ application for cancellation of bail bond, dated 05.01.2022, and for taking respondent nos. 5 and 6 in judicial custody, who have been released on default bail, granted under Section 167 (2) of the Code of Criminal Procedure, 1973, in a case arising out of Sadar Police Station Case No. 671 of 2021, dated 30.09.2021, registered for the offences punishable under Sections 302/120-B/34 of the Indian Penal Code. The petitioner has also prayed for taking action against the Investigation Officer of Sadar



Police Station Case No. 671 of 2021, who has deliberately not submitted charge sheet within statutory period in collusion with the accused persons.

3. Learned Counsel for the petitioner submits that the Investigation Officer of Sadar Police Station has submitted the delayed charge sheet in connivance with the accused persons (respondent nos. 5 and 6) in spite of the judicial order to submit charge sheet within a period of ninety days.

4. Learned Counsel for the State submits that the superior police authority shall enquire into the matter and shall fix the responsibility upon the erring police officer responsible for delayed filing of the charge sheet in a serious crime.

5. Learned Counsel relies upon a decision of the Supreme Court, in the case of **State through Central Bureau of Investigation versus T. Gangi Reddy alias Yerra Gangi Reddy**, reported in **(2023) 4 SCC 253**.

6. In the light of the decision of the Supreme Court, in **T. Gangi Reddy alias Yerra Gangi Reddy** (supra), learned Counsel for the petitioner, after some argument, seeks permission to withdraw this writ application with liberty to file an application for cancellation of bail before the appropriate court.



7. In paragraph 21 of **T. Gangi Reddy alias Yerra Gangi Reddy** (supra), the Supreme Court has discussed the law laid down by it, in the case of Aslam Babalal Desai Case and has noted down the same, which is as follows:-

“21.1. Release of accused on default bail under Section 167(2) CrPC is not on merits, but on the failure of the investigating agency in completing the investigation and filing the charge-sheet within the stipulated time prescribed therein.

21.2. That every person released on bail under Section 167(2) CrPC shall be deemed to be so released under the provisions of Chapter XXXIII CrPC, which includes Sections 437 (5) and 439 (2).

21.3 That the bail in favour of a person, who is released on default bail under Section 167(2) CrPC cannot be cancelled on mere filing of the charge sheet, but can be cancelled on making out a special and strong ground that commission of non-bailable crime is disclosed from the charge sheet.”

8. In paragraph 21.3 of **T. Gangi Reddy alias Yerra Gangi Reddy** (supra), the Supreme Court has held that bail in favour of a person, who is released on default bail, under Section 167(2) of the Code of Criminal Procedure, 1973, cannot



be cancelled on mere filing of charge sheet, but can be cancelled on making out a special and strong ground that commission of non-bailable crime is disclosed from the charge sheet.

9. After having heard learned counsel for the parties and taking into consideration the prayer of the petitioner, permission is granted for withdrawal of this writ application with liberty to the petitioner to take steps for cancellation of bail in accordance with the law laid down by the Supreme Court, in **T. Gangi Reddy alias Yerra Gangi Reddy** (supra).

10. This writ application is dismissed as withdrawn, with the aforesaid liberty.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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