

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.258 of 2020

Arising Out of PS. Case No.-838 Year-2019 Thana- DANAPUR District- Patna

SHANKAR KUMAR Son of Chandeshwar Rai Residence of Near R.D.S. School, Ashopur Road, Jamsaut, Patna, P.S.- Danapur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Police Dept. Govt. of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Senior Superintendent of Police, Patna.
4. The Sub Divisional Officer, Danapur.
5. The SHO, Danapur Police Station
6. Vedprakash @ Ved Kumar Son of Dinanath Rai Resident of Village-Tarachak, P.S.- Danapur, District- Patna.
7. Jaiprakash @ Bhola Kumar Son of Dinanath Rai Resident of Village-Tarachak, P.S.- Danapur, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ranjeet Kumar
For the Respondent/s	:	Mr.M. Nasrul Huda Khan

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 11-07-2023 The present writ application has been filed challenging the order dated- 28.01.2020 passed by learned ACJM- I, Civil Court, Danapur whereby the learned court below has allowed the privilege of default bail in favour of the private respondents in Danapur PS Case No. 838 of 2019 in exercise of jurisdiction conferred under Section 167(2) of the Code of Criminal Procedure.

Learned counsel for the petitioner submits that the Investigating Officer of Danapur PS Case No. 838 / 2019 as



well as the S.H.O. of the said Police Station deliberately delayed the submission of charge sheet before the learned court below perhaps in connivance with the private respondents and submitted charge sheet in the learned court below on 91st day i.e. on 28-01-2020.

Learned counsel appearing for the State referring to paragraph nos.- 13 & 14 of the counter affidavit filed on behalf of the respondent nos. 3 to 5 submits that the Investigating Officer of the case was transferred and one Ashok Kumar Singh was appointed as the Investigating Officer of Danapur PS Case No. 838 of 2019 and it was due to inadvertence and misconception that the newly appointed Investigating Officer could not submit charge sheet before the learned court below within ninety days. The ninety days period was completed on 27/01/2020. He further submits that admittedly the I.O. of Danapur PS Case No. 838 of 2019 is guilty of not submitting the charge sheet within the stipulated period of 90 days and the respondents are taking appropriate action against the then Investigating Officer.

Learned counsel for the petitioner relies upon a judgment of the Hon'ble Supreme Court reported in (2023) 4 SCC253 State through Central Bureau of Investigation versus T.



Gangi Reddy alias Yerra Gangi Reddy. In the light of the said judgment, learned counsel for the petitioner after some argument seeks permission to withdraw this writ application with liberty to file application for cancellation of bail before the appropriate court.

In paragraph no. 21 of the said judgment the Hon'ble Apex Court has discussed the law laid down by the Supreme Court in 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.

In paragraph- 21.3 of the aforesaid judgment the



Hon'ble Supreme Court has held that bail in favour of a person, who is released on default bail under Section 167(2) CrPC 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.

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 judgment of the Hon'ble Supreme Court reported in (2023) 4 SCC 253.

The application stands dismissed as withdrawn with the aforesaid liberty.

(Anil Kumar Sinha, J)

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