

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26322 of 2023

Arising Out of PS. Case No.-25 Year-2021 Thana- NATHNAGAR District- Bhagalpur

1. Avinash Kumar S/O- Kishore Yadav Mohalla- Vijaynagar, Ps Dist- Banka
2. Manish Kumar S/O- Mahindra Yadav Mohalla- Anathalaya Road, Nathnagar, Ps- Nathnagar
3. Raj Kumar S/O- Suresh Yadav Village- Bhimkitta, Ps Madhusudanpur
4. Shiv Kumar Chaudhary S/O- Bindeshwari Chaudhary Village- Bhimkitta, Ps Madhusudanpur
5. Prince Raj S/O- Shiv Kumar Chaudhary Village- Bhimkitta, Ps - Madhusudanpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Manoj Kumar Jha, Advocate

For the Opposite Party/s : Mr.Rajendra Singh, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 01-05-2023 Heard learned counsel for the petitioners and learned
APP for the State.

This application has been filed for quashing of the order dated 18.11.2022 passed by learned Sessions Judge, Bhagalpur in S.T. No. 832 of 2022 arising out of Nathnagar (Madhusudanpur) P.S. Case No. 25 of 2021 by which learned court below cancelled the bail bond of the petitioners and ordered to issue non-bailable warrant against them.

Learned counsel for the petitioners has submitted that impugned order dated 18.11.2022 is bad in law, in view of the law laid down by this Court in case of *Sandeep Kumar*



Tekriwal Vs. State of Bihar reported in **(2009) 2 PLJR 260** as

held as under:-

“(16) Section 317 CFC provide for inquiries and trial being held in the absence of accused in certain cases. However, if the Magistrate finds that personal appearance of the accused is necessary, he would direct that accused would no longer be represented on the next date by a pleader under Section 317 Cr.PC. but would appear in person. If the accused in spite of such order does not appear in person, it would be open for the learned Magistrate to issue warrant of arrest and proceed in accordance with the procedure prescribed in Chapter VI of the Cr.P.C and may also cancel bail and bail bond and proceed in accordance with Chapter- XXXIII of the Cr.P.C. It does not appear from the order of the preceding dates I.e. 31.1.2008, 26.3.2008 that personal attendance of petitioner would no longer be dispensed with, and he is required to attend in person. The Magistrate in view of Section 317(1) Cr.P.C. ought to have given an opportunity to an accused to appear in person who was being allowed to be represented through a pleader. The order of preceding dates in the case on the contrary shows that Magistrate in fact accepted the representation under Section 317 CPC. The Magistrate has to follow the procedure prescribed therein, if it does not dispenses with his personal attendance. A Magistrate while rejecting a representation under Section 317 Cr.PC cannot at the same time cancel bail bond and issue non-bailable warrant of arrest if on preceding dates has not clearly directed that personal attendance under Section 317 Cr.PC will no longer be dispensed with. The Court ought to provide a reasonable opportunity to the accused to appear in person whose representation was earlier being allowed under Section 317 Cr.PC. In this case it appears that trial lingered as a co- accused Prem Prakash was absconding Learned counsel for the petitioner has also submitted that there have been no laches in his part.”

In view of the above, this application is allowed. The order dated 18.11.2022 passed by learned Sessions Judge, Bhagalpur in S.T. No. 832 of 2022 arising out of Nathnagar (Madhusudanpur) P.S. Case No. 25 of 2021 is hereby quashed.



The Petitioners shall be **released on Bail** on furnishing fresh Bail bonds in the trial court. The court below shall accept the same and release the petitioners on bail. The petitioners are directed to participate in the trial regularly.

(Sandeep Kumar, J)

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