

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54655 of 2023

Arising Out of PS. Case No.-326 Year-2022 Thana- PUPRI District- Sitamarhi

DILIP THAKUR SON OF LATE SHIV SHANKAR THAKUR R/O-
JHAJHIHAT, P.S. - PUPRI, DISTT. - SITAMARHI

... .. Petitioner/s

Versus

1. The State of Bihar
2. DEEPAN THAKUR SON OF LATE DHIDHAR THAKUR @
RAJESHWAR THAKUR R/O - JHAJHIHAT MAHARANI ASTHAN
NAGAR PANCHAYAT, WARD NO. 25, P.S. - PUPRI, DISTT. -
SITAMARHI

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ansul, Advocate Mr. Birendra Kumar, Advocate
For the State	:	Mr. Shantanu Kumar, Advocate
For the O.P. No. 2	:	Mr. Dinesh Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

Date : 18-10-2023

Heard learned counsel for the petitioner, learned A.P.P. for the State and learned counsel for the opposite party no. 2.

2. The present application has been filed seeking quashing of the order dated 14.06.2023 passed in Cr. Revision No. 51 of 2023 arising out of Pupri P.S. Case No. 326 of 2022 whereby the learned Sessions Judge, Sitamarhi rejected the petition filed by the petitioner for setting aside the cancellation of provisional bail of the petitioner as well as the order dated 06.01.2023 passed by the Sub-Divisional Judicial Magistrate, Pupri at Sitamarhi whereby the learned Sub-Divisional Judicial Magistrate, Pupri at Sitamarhi cancelled the provisional bail granted to the petitioner by order dated 09.11.2022.



3. Learned counsel for the petitioner draws the attention of the Court to the revisional order passed by the learned Sessions Judge, Sitamarhi and submits that the learned Sessions Judge, while rejecting the petition of the petitioner which was filed against the order of the learned Sub-Divisional Judicial Magistrate, Pupri at Sitamarhi dated 06.01.2023 whereby his provisional bail was cancelled, held that the order cancelling the provisional bail of the petitioner by the learned Sub-Divisional Judicial Magistrate, Pupri at Sitamarhi was an interlocutory order, as such, revision was not maintainable. It is submitted that while holding that the revision application was not maintainable but still held that the order dated 06.01.2023 of cancellation of bail and issuance of NBW against the petitioner and another accused is legal, correct and need no interference on the point of bail order or its cancellation revision is not maintainable.

4. Learned counsel for the petitioner thus submits that, on the one hand, the learned Sessions Judge held that the revision was not maintainable but then also records that the order passed by the learned Sub-Divisional Judicial Magistrate, Pupri at Sitamarhi cancelling the provisional bail bonds of the petitioner was legal, this appears to be dichotomic.

5. Learned counsel next submits that the dispute in the present case between the petitioner and the opposite party no. 2 is



purely civil in nature to which a criminal colour has been given. It is further submitted that the learned Sub-Divisional Judicial Magistrate, Pupri at Sitamarhi was pleased to grant the provisional bail to the petitioner by order dated 09.11.2022 solely for the reason that the dispute was purely civil though the order granting provisional bail did not record reason but then it was the discretion of the learned trial court to grant or not to grant bail or to grant provisional bail. It is next submitted that petitioner in compliance of the order granting provisional bail was appearing on each and every date fixed in the case. It is submitted that the petitioner on 07.12.2022 had appeared before the learned trial court and had sought time on which the Court was pleased to grant thirty days time to the petitioner with a direction that after thirty days the petitioner shall remain present in the Court, but then there was no condition imposed that if petitioner will not appear on the 30th day his provisional bail shall be cancelled.

6. Learned counsel submits that thirty days' period was coming to an end as per calculation of the petitioner on 08.01.2023 but as per the case of the prosecution the said thirty days' period was coming to an end on 06.01.2023. It is next submitted that the calculation of the prosecution was correct but then it was not the intention of the petitioner not to appear before the Court as the petitioner on 09.01.2023 had appeared. It is next submitted that petitioner had no intention of misusing the privilege of grant of



provisional bail to him. It is just that the calculation of the date as per the petitioner was not correct which led to cancellation of his provisional bail. It is further submitted that petitioner was not aware that his provisional bail bonds have been cancelled as there was no condition imposed in the order dated 07.12.2012 as recorded hereinabove and thus on 09.01.2023 he through his Advocate got an application filed under Section 317 Cr.P.C. and then he came to know that his provisional bail has already been cancelled.

7. Learned counsel appearing for the opposite party no. 2 vehemently opposes the submission of the learned counsel for the petitioner and submits that the present application is not maintainable under Section 482 of the Cr.P.C. It is further submitted that petitioner has remedy of surrendering before the learned trial court and seek regular bail.

8. Learned counsel for the petitioner rebuts the submission of the learned counsel for the opposite party no. 2 and submits that right to life and liberty as enshrined under Article 21 of the Constitution of India is a fundamental right, it is next submitted that had it been the case of the prosecution that petitioner was misusing the privilege of provisional bail granted then perhaps what has been submitted by the learned counsel for the opposite party no. 2 could have been appreciated but here is a case where the dispute is purely civil and the petitioner was appearing on each date fixed in the case



in compliance of the order of the learned trial court, it is just that the petitioner miscalculated the date on which he had to appear in terms of the order dated 07.12.2022 which led to cancellation of his provisional bail, which cannot be countenanced.

9. Considering the submissions made by the learned counsel for the petitioner, the order 14.06.2023 passed in Cr. Revision No. 51 of 2023 as well as order dated 06.01.2023 passed by the Sub-Divisional Judicial Magistrate, Pupri at Sitamarhi in connection with Pupri P.S. Case No. 326 of 2022 cancelling the provisional bail of the petitioner are hereby quashed.

10. Accordingly, this application stands allowed.

(Satyavrat Verma, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	19.10.2023
Transmission Date	19.10.2023

