

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55393 of 2022

Arising Out of PS. Case No.-216 Year-2018 Thana- ATHMALGOLA District- Patna

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NITISH KUMAR @ NITISH YADAV S/O AWADHESH YADAV Resident
of village- Chanda, P.S.- Athmalgola, District- Patna

... .. Petitioner/s

Versus

THE STATE OF BIHAR BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kr Singh No.1
For the Opposite Party/s	:	Mr. Jharkhandi Upadhyay APP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 21-02-2023 Heard the learned counsel for the parties.

The undisputed fact is that when the application was filed on 16.08.2022 there was no charge-sheet filed by the prosecution. After the Court called for a report the charge-sheet has been filed by the prosecution at 12.00 noon.

Once charge-sheet was not filed within 90 days, right has accrued to the petitioner for default bail and the same cannot be defeated by subsequent filing of charge-sheet.

Learned counsel has also relied upon the case of *M. Ravindran Vs. Directorate of Revenue Intelligence 2021 2 SCC 485*.

Considering the submissions of the parties, this court is of the opinion that the petitioner is entitled to default bail.



Accordingly, the impugned order dated 16.08.2022 passed by the Sub-Divisional Judicial Magistrate, Barh, Patna in connection with Athmalgola P.S. Case No. 216 of 2018 is hereby quashed.

The Court below is directed to release the petitioner forthwith after accepting his bail bond.

It has come to the notice of this Court that whenever an application for default bail is filed, the office of the Presiding Officer makes a call to the police officials and thereafter charge-sheet is filed and the application is dismissed.

It seems that Officers are not aware of the law laid down by the Hon'ble Supreme Court in this regard. Once a right of default bail has accrued to the accused the same cannot be defeated by subsequent filing of charge-sheet.

The S.D.J.M., Barh should be cautious in near future and he should not pass orders against law.

Let a copy of this order be communicated to the District Judge, Patna through FAX and e-Mail for its compliance forthwith.

(Sandeep Kumar, J)

Vikas/Shishir

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