

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68203 of 2024

Arising Out of PS. Case No.-167 Year-2021 Thana- MUZAFFARPUR RAIL P.S. District-
Saran

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Manish Kumar, Son of Madan Mahto, Resident of Village-Suryajpur
(Surajpur), Baghatola, P.S.- Piprakothi, District-East Champaran at Motihari
(Bihar)

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar, Advocate
For the Opposite Party/s : Mrs. Anita Kumari, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 11-02-2025

The present application has been filed by the petitioner for quashing of the order dated 08.07.2024 passed by learned Sessions Judge, Saran at Chapra in connection with Cr. Appeal No.01 of 2023 arising out of Muzaffarpur Rail P.S. Case No.167 of 2021 registered under Section 379 of the Indian Penal Code (in short 'IPC'), whereby the learned trial court has cancelled the bail bond of the petitioner and issued a non-bailable warrant of arrest against the petitioner.

2. It is submitted by learned counsel that upon conviction in Trial No. 4089 of 2022 (G.R. No.258 of 2021) arising out of Muzaffarpur Rail P.S. Case No.167 of 2021 for the offence under Section 411 of the Indian Penal Code (in



short 'IPC'). Petitioner was sentenced for one year rigorous imprisonment vide order dated 03.12.2022 as passed by Railway Judicial Magistrate, Sonapur, Saran.

3. It is pointed out that as to prefer appeal against aforesaid conviction, the learned trial court granted provisional bail to the petitioner under Section 389(3) of the Code of Criminal Procedure (for short 'CrPC'), which was confirmed till disposal of appeal upon preferring Criminal Appeal No.01 of 2023 before the court of learned Sessions Judge, Saran at Chapra.

4. It is pointed out that the sentence was remained suspended till disposal of appeal and there was no such pre-condition that petitioner was to remain present on each and every date when the appeal was to be listed or taken on Board. It is submitted that even though non-appearance was neither intentional nor deliberate.

5. Heard learned APP for the State.

6. It would be apposite to reproduced hereinbelow the impugned order dated 08.07.2024 for the sake of better understanding of the case:-

“अपीलकर्ता की ओर से समयावेदन दी गई है। बाद पुकार पर कोई



भी उप० नहीं हुए। अपीलकर्ता का बंध पत्र खंडित किया जाता है।
कार्यालय NBW जारी करें एवं आदेश की प्रति निम्न न्यायालय को
भेजे। वाद दि० 06/8/24 को वास्ते सुनवाई हेतु।"

7. It would further be apposite to reproduce the
order dated 02.02.2023 as passed in Criminal Appeal No.01
of 2023 as under:-

"IN THE COURT OF SESSIONS JUDGE

SARAN AT CHAPRA

Criminal Appeal No.01/2023

Manish Kumar Appellant

Versus

State of BiharRespondent

.....

02.02.2023

The appellant Manish Kumar has preferred this criminal appeal against the judgment and order dated 03.12.2022 passed by Dr. Mohammad Jeshan Chand, Judicial Magistrate, Railway, Sonapur, Saran in G.R. No.4089 of 2022, Muizaffarpur Rail P.S. Case No.167 of 2021 whereby he has convicted the appellant under Section 411 of the I.P.C. and sentenced him to undergo R.I. for one year.

Heard Sri Krishna Murari Singh the learned counsel for the appellant and Sri S.N. Singh the learned P.P. for the respondent State of Bihar. The appeal is filed within the period of limitation. So, the appeal is admitted for hearing.

The learned counsel for the appellant has also pressed the prayer for bail of appellant by this Court as the trial court has granted bail to the appellant for limited period only to file the appeal.



It has been submitted that the appellant was on bail who never misused the privilege of bail. Appeal is continuation of trial. The learned counsel has also pointed out certain facts and circumstances of the case and the evidence on record which require appreciation for disposal of the appeal. The learned P.P. has also fairly conceded the submissions made by the learned counsel for the appellant. This appeal is not likely to be disposed of in very near future. So, in view of the above facts and circumstances of the case, the provisional bail granted to the appellant by the learned court-below is confirmed. The sentence awarded to the appellant shall remain suspended till the disposal of appeal. Put up on 28.02.2023 for hearing and disposal in accordance with law.

(Dictated)

Sd/ Illegible

Sessions Judge

Saran at Chapra

02.02.2023”

8. It is admitted position under law that non-appearance of appellant in criminal appeal not appears fatal until and unless it is not directed specifically as court may proceed even after appointing *amicus*. There was no any direction to the appellant as to remain present in person on the date fixed for hearing and moreover an adjournment application was available, which without taking care, bail bond of petitioner was cancelled.



9. Considering the aforesaid, the impugned order dated 08.07.2024 passed by learned Sessions Judge, Saran at Chapra in connection with Cr. Appeal No.01 of 2023 arising out of Muzaffarpur Rail P.S. Case No.167 of 2021 is hereby quashed and set aside. Petitioner shall allow to remain on bail till disposal of appeal with same bailors and bonds as accepted by learned appellate court while suspending the sentence.

10. The application stands allowed.

11. Let a copy of the judgment be communicated to the learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13-02-2025
Transmission Date	13-02-2025

