

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.24154 of 2016

Arising Out of PS. Case No.-173 Year-2013 Thana- CHAPRA MUFFASIL District- Saran

=====

Ram Bilash Rai son of Chhathi Rai, resident of Village- Sandha, PS-
Chapra Muffasil, District Saran.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

=====

Acts/Sections/Rules:

- Sections 147, 148, 341, 323, 324, 307, 504 of the Indian Penal Code
- Section 27 of the Arms Act

Cases referred:

- Free Legal Aid Committee, Jamshedpur Vs. State of Bihar as reported in (1982) 3 SCC 378

Petition - filed against the order whereby the CJM has rejected the application of the petitioner for restoring the bail bond which was cancelled by the Court by order on account of non-appearance of the petitioner before the Court.

Petitioner preferred anticipatory bail petition before this Court and he was directed to be enlarged on anticipatory bail subject to “the additional condition that he will remain physically present before the court below on each and every date at least for two years or till disposal of the case, whichever is earlier and in case of failure on two consecutive dates without any reasonable explanation, the liberty granted to the petitioner shall be deemed to be cancelled.”

On a particular date, the matter was listed before CJM for receipt of police report. But the petitioner did not appear before CJM.

Held - The case was listed before CJM for receipt of police report as investigation was still going on the petitioner was already cooperating the police in investigation. (Para 9)

There was no occasion for the petitioner to attend the Court of Magistrate when the case was listed for receipt of police report. Accused is required to attend the Court of Magistrate only after submission of charge-sheet and issuance of process against him and not during the stage of investigation. (Para 10)

Petition is allowed. (Para 13)

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Appearance :

For the Petitioner : Mr. Jitendra Kumar, Advocate

For the State : Mr. B.N.Pandey, APP

Amicus Curiae : Mr. Ajay Kumar Thakur, Advocate

**CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT**

Date : 31-01-2025

The present petitioner under Section 482 Cr.PC has been preferred by the petitioner against the order dated 23.12.2015 whereby the learned Chief Judicial Magistrate, Saran at Chapra in Chapara Muffasil P. S. Case No. 173 of 2013 registered for the offences punishable under Sections 147, 148, 341, 323, 324, 307, 504 of the Indian Penal Code and Section 27 of the Arms Act has rejected the application of the petitioner for restoring the bail bond which was cancelled by the Court *vide* order dated 19.02.2015 on account of non-appearance of the petitioner before the Court.

2. The factual background of the case is that after



lodging of the FIR, the petitioner preferred anticipatory bail petition before this Court and he was directed to be enlarged on anticipatory bail subject to “the additional condition that he will remain physically present before the court below on each and every date at least for two years or till disposal of the case, whichever is earlier and in case of failure on two consecutive dates without any reasonable explanation, the liberty granted to the petitioner shall be deemed to be cancelled.”

3. On 19.02.2015 the matter was listed before learned Chief Judicial Magistrate for receipt of police report. But the petitioner did not appear before learned Chief Judicial Magistrate on the relevant date i.e. on 19.02.2015 and hence, his bail bond was cancelled and N.B.W. was issued against him. Subsequently, the petitioner moved a petition before learned Chief Judicial Magistrate for cancellation of the N.B.W. and permission to file fresh bail bond submitting that on account of illness, he could not attend the Court on the relevant date i.e. on 19.02.2015.

4. I have heard learned counsel for the petitioner, learned *Amicus Curiae* and learned APP for the State.

5. Learned counsel for the petitioner submits that the impugned orders dated 19.02.2015 and 23.12.2015 passed by



learned Chief Judicial Magistrate, Saran at Chapra are not sustainable in the eye of law. To substantiate his submission, he submits that as per the conditions of the anticipatory bail, the petitioner was required to attend the Court only after submission of the charge-sheet and issuance of process against him. Without submission of charge-sheet and getting summons from the Court, there was no occasion for the petitioner to attend the Court because during that period investigation was going on and he was cooperating the police in investigation. He also refers to and relies upon **Free Legal Aid Committee, Jamshedpur Vs. State of Bihar** as reported in **(1982) 3 SCC 378**.

6. Learned *Amicus Curiae* also submits that accused is required to attend the Court only during inquiry or trial and after getting summons of the Court. At the relevant time, the matter was still at the stage of investigation and no charge-sheet was submitted and no summons was issued to the petitioner and hence, there was no requirement for the petitioner to attend the Court, because during investigation, matter is fixed before Magistrate Court only for receipt of police report in routine manner and during that period, the accused is not required to attend the Court.

7. Learned APP for the State also fairly concedes that



the impugned orders are not sustainable in the eye of law, in view of **Free Legal Aid Committee, Jamshedpur case (supra)**.

8. I considered the submissions advanced by both the parties and learned *Amicus Curiae* and perused the material on record.

9. I find that on 19.02.2015 the case was listed before learned Chief Judicial Magistrate for receipt of police report as investigation was still going on and as per the statement of learned counsel for the petitioner, the petitioner was already cooperating the police in investigation. As per further statement of learned counsel for the petitioner, charge-sheet was submitted subsequently on 26.08.2016 and the cognizance of the offence was taken by learned Magisterial Court on 03.11.2016 and summons was directed to be issued against him on 10.04.2017.

10. Hence, I find that there was no occasion for the petitioner to attend the Court of learned Magistrate on 19.02.2015 when the case was listed for receipt of police report. Accused is required to attend the Court of Magistrate only after submission of charge-sheet and issuance of process against him and not during the stage of investigation as **Hon'ble Supreme Court** has clearly held in **Free Legal Aid Committee,**



Jamshedpur Case (supra) in the following words:-

“2. The first interim direction sought by Mr Sibal is that when an accused is released on bail, he should not be required to appear in court until the charge-sheet is filed and process issued by the court. Mr Sibal states that today what happens in many of the Magistrates' courts in Bihar is that the accused is required to appear before the court every 14 days even though he is on bail and this causes considerable harassment to the accused. He submits and in our opinion rightly that this is not required by law, and Mr K.G. Bhagat, learned Advocate appearing on behalf of the State of Bihar, fairly concedes that law does not require that an accused on bail need appear before the court before the charge-sheet is filed and process issued by the court. We, therefore, direct that whenever an accused is released on bail he need not be required to appear before the court until the charge-sheet is filed and the process is issued by the court.....”

(Emphasis supplied)

11. Hence, the impugned orders dated 19.02.2015 and 23.12.2015 passed by learned Magisterial Court are not sustainable in the eye of law and hence, they are set aside and the bail bond of the petitioner is restored.

12. Now the petitioner is directed to attend the Court as per conditions of the anticipatory bail, which has been granted by this Court.

13. Accordingly, the present petition stands allowed.

14. The assistance provided by Mr. Ajay Kumar Thakur, learned *Amicus Curiae* is highly appreciated. The Secretary Patna High Court Legal Services Committee is directed to pay Rs. 10,000/- to him towards honorarium. Let a



copy of this order be sent to the Secretary Patna High Court
Legal Services Committee for information and needful.

(Jitendra Kumar, J.)

S.Ali,ramesh/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	04.02.2025
Transmission Date	04.02.2025

