

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43259 of 2025

Arising Out of PS. Case No.-58 Year-1994 Thana- BISHANPUR District- Darbhanga

Amber Imam Hashmi S/O Late Md. Nematullah Resident of Village-
Basantpur, P.S.- Bishanpur, Dist.- Darbhanga, Presently R/O Mohalla- G.N.
Ganj, P.s.- Laheriasarai, Dist.- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ram Pukar Chaudhary S/O Late Ram Sakha Chaudhry R/O Vill.- Patori,
P.O.- Patori- Basant, P.s.- Moro, Dist.- Darbhanga.

... .. Opposite Party/s

with
CRIMINAL MISCELLANEOUS No. 43260 of 2025

Arising Out of PS. Case No.-58 Year-1994 Thana- BISHANPUR District- Darbhanga

Kausar Imam Hashmi son of Late Md. Nematullah Resident of Village
-Basantpur PS- Bishanpur Dist- Darbhanga Presently village- Ward no. 41,
G.N. Balbhadarpur, Ps- Laheriya Sarai, Dist- Darbhanga

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ram Pukar chaudhary Son of Late Ram Sakha Chaudhary village- Patori,
Po- Patori Basant, Ps- Moro, Dist- Darbhanga

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 43259 of 2025)

For the Petitioner/s : Mrs. Shama Sinha, Adv.
Mr. Nikhil Kr. Agarwal, Adv.
Ms. Aditi Hansaria, Adv.
Ms. Suman Kumari, Adv.

For the Opposite Party/s : Mr. Manoj Kumar, APP

(In CRIMINAL MISCELLANEOUS No. 43260 of 2025)

For the Petitioner/s : Mrs. Shama Sinha, Adv.
Mr. Nikhil Kr. Agarwal, Adv.
Ms. Aditi Hansaria, Adv.
Ms. Suman Kumari, Adv.

For the Opposite Party/s : Mrs. Renu Kumari, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
CAV JUDGMENT

Date : 01-08-2025



1. Heard learned counsel appearing on behalf of the parties.

2. The present quashing petition preferred under Section 528 and 529 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (in short BNSS) praying for quashing of the order dated 20.06.2025 passed by learned Additional District and Sessions Judge III, Darbhanga, in Sessions Trial No. 326 of 1999/ registration no. 3038 of 2014, arising out of Bishanpur P.S. Case No 58 of 1994 for petitioner namely, Amber Imam Hashmi and quashing of the order dated 20.06.2025 passed by learned Additional District and Sessions Judge III, Darbhanga, in Sessions Trial No. 320 of 2010/ registration no. 3037 of 2014, arising out of Bishanpur P.S. Case No 58 of 1994 for petitioner namely, Kausar Imam Hashmi.

3. Both petitioners /accused preferred application before learned trial court for their representation under Section 317 of the Criminal



Procedure Code (in short, Cr.P.C.), which was rejected through impugned order and thereafter the bail bond of both petitioners was canceled, subsequent to that the accused petitioner, namely, Amber Imam Hashmi (of Cr. Misc. No. 43259 of 2025) who was present in court, was taken into custody and remanded to jail, whereas the NBW was issued against another accused /petitioner, namely Kausar Imam Hashmi (of Cr. Misc No. 43260 of 2025). Both accused petitioners are active practitioners of the District Civil Court, Darbhanga.

4. As a matter of subsequent development the accused petitioner, namely, Amber Imam Hashmi was granted provisional bail vide order dated 24.06.2025 by learned trial court, whereas the execution of NBW *qua* accused petitioner, namely, Kausar Imam Hashmi, was stayed provisionally till 27.06.2025. These orders were also challenged saying learned trial court out of its biased approach inserted some onerous condition.

5. The main prayer of Mrs. Shama Sinha,



learned counsel appearing for the petitioners, is to quash certain remarks while granting provisional bail to the petitioner namely, Amber Imam Hashmi, and also certain observations made by the learned trial court because it appears contemptuous and were imposed with a biased approach. It is also prayed that these prayers were raised through I.A. No. 01 of 2025 as preferred in both the petitions separately. To understand the factual background, it is important to mention that for the crime in question, two separate FIRs were lodged. The first FIR was Bishanpur P.S. Case No. 57 of 1994 lodged by the petitioners side, in counter to which Bishanpur P.S. Case No. 58 of 1994 was lodged, where the petitioners are accused. Bishanpur P.S. Case No. 58 of 1994 was lodged for the offences punishable under Section 307 of the Cr.P.C. alongwith other allied sections of IPC along with Arms Act, which later on converted to 302 of IPC. For Bishanpur P.S. Case No. 57 of 1994, Sessions Trial no. 395 of 1998 is pending before the court of learned



District and Additional Sessions Judge VII, Darbhanga.

6. To understand the factual aspects for preferring the present criminal quashing petition, it would be apposite to reproduce the order dated 20.06.2025 as passed in Sessions Trial No. 326 of 1999 by learned Additional Sessions Judge III, Darbhanga :-

Annexure. P/1

Sessions Trial No. 326/1999

CIS No. 3038/2014

*(Arising out of Bishanpur P.S. Case No. 58/1994)
Order-20-06-2025*

(1) The Present matter is listed today. There are total six accused persons facing trial in the present case. Originally, there were total 12 accused persons. One more sessions trial being Sessions Trial No. 320/2010 (CIS 3037/2014) stands separated from this trial. There is representation under section 317 of Criminal Procedure Code, 1973 on behalf of the accused Amber Imam Hashmi, Raja Hashmi, Anjar Hussian and Mobin Hashmi. So far as the accused Ishmat Belal Hashmi and Jasim Nadaf are concerned, learned counsel for co-accused submits that they have died and in due course, death certificate would be filed on or before the next date. So, now this case is for trial of four accused persons namely (1) Amber Imam Hashni (2) Raja Hashmi (3) Anjar Hashmi and (4) Mobin Hashmi subject to confirmation of death of co-accused persons.

(ii) The accused Amber Imam Hashmi is an advocate of Darbhanga Bar Association. He appeared just after about 01 hour from the time of filing representation for arguing in another case. I will deal with this issue in the later part of this order.

(iii) The record of this case speaks volume about the fact that all possible effort has been taken by the accused to delay the trial of this & case. In this regard, it would be sufficient to place on record that the Hon'ble Court vide its order Judgement dated 21-04-2015 passed in Criminal Miscellaneous No. 27216/2004 had been pleased to direct the trial court to conclude the trial expeditiously. Para 5 of the said judgement read as" since in this case discharge petition was rejected long back on 03-07-2004, while dismissing the present petition, it is desirable to direct



the court below to proceed with the case expeditiously, so that the case may come to its logical end without unnecessary delay. While proceeding with the case, learned trial judge is required to take up this matter at least thrice in a week. Office is directed to communicate this order to the court below forthwith for its strict compliance." Further, the Hon'ble Court vide its order dated 16-04-2015 passed in Criminal Miscellaneous No. 44013 of 2012 had been pleased to observe "Since the criminal case was lodged way back in the year 1994 and since then more than 20 years have already elapsed, therefore, the learned trial court is further directed to take up the trial of the accused persons on priority basis and make all endeavours to conclude the same at an early date preferably within a period of six months from the date of receipt/production of a copy of the present order. The learned trial court shall not grant unnecessary & case. In this regard, it would be sufficient to place on record that the Hon'ble Court vide its order Judgement dated 21-04-2015 passed in Criminal Miscellaneous No. 27216/2004 had been pleased to direct the trial court to conclude the trial expeditiously. Para 5 of the said judgement read as" since in this case discharge petition was rejected long back on 03-07-2004, while dismissing the present petition, it is desirable to direct the court below to proceed with the case expeditiously, so that the case may come to its logical end without unnecessary delay. While proceeding with the case, learned trial judge is required to take up this matter at least thrice in a week. Office is directed to communicate this order to the court below forthwith for its strict compliance." Further, the Hon'ble Court vide its order dated 16-04-2015 passed in Criminal Miscellaneous No. 44013 of 2012 had been pleased to observe "Since the criminal case was lodged way back in the year 1994 and since then more than 20 years have already elapsed, therefore, the learned trial court is further directed to take up the trial of the accused persons on priority basis and make all endeavours to conclude the same at an early date preferably within a period of six months from the date of receipt/production of a copy of the present order. The learned trial court shall not grant unnecessary a adjournment merely on asking either on behalf of the prosecution or on behalf of the defence."

(iv) It is also appropriate to mention here that no stone has been left unturned to malign the Judicial Officer whoever took up this case and just to delay it either by the accused Amber Imam Hashmi or co-accused Kaushar Imam Hashmi. In this regard, Order dated 02-06-2014, 06-06-20214 and 16-06-2014 passed by then District Judge, Darbhanga is quite relevant to refer to which has been confirmed by the Hon'ble Court on being challenged. The then learned District Judge, Darbhanga vide its order dated 06-06-2014 had been pleased to observe vide para 5 that " Considering the



aforesaid facts and also considering the submissions of the learned Incharge PP and also the accused Kaushar Imam Hashmi, one application which was filed on 03-06-2014 by the co-accused Amber Imam Hashmi is not maintainable and hereby rejected. The another application dated 03-06-2014 was filed by the accused Kaushar Imam Hashmi is only with a view to cast aspersion on judiciary. The accused persons are really acting against the interest of administration of justice. The application dated 03-06-2014 filed by the accused in which false and malicious statement made by them amount to scandalising the court and undermining the majesty of justice and therefore, the application dated 03-06-2014 filed by the accused Kaushar Imam Hashmi is hereby rejected. The proceedings of the trial of the present case shall be continued from day to day until all the prosecution witnesses in attendance have been examined, irrespective of any hurdles that may be created by the accused persons." The conduct as mentioned in the order is just a tip of iceberg. It is an important to note that even the matters get delayed till date. (v) One more surprising thing which has been noticed by this court that records of this court stands manipulated. It appears that manipulation by putting blade cut on postmortem report is quite evident. Who did it and when it was done is a matter of inquiry because this records got transferred between several court and passes through hands of different office clerk in the last several years but the possibility of involvement of the accused cannot be ruled out for the reason that he is an ultimate beneficiary of such manipulation to delay the trial. This court would make endeavour to have second copy from the DMCH, Darbhanga as early as possible.

(vi) The profile of the accused is also needs to be taken into consideration. He is an advocate for the last 40 years. His two brothers are also practising lawyer in this court. One of them died during pendency of the case as submitted across the bench. They are highly influential. At least, the accused Amber Imam Hashmi is concerned, he does not hesitate to make unbecoming behaviour contrary to the normal practice in the court room.

(vii) Now, once after filing representation, the accused Amber Imam Hashmi appeared in the court. This court ask him as to why he is ready to argue in another case and has filed representation in his own case. This court further asked to at least go the dock and show respect to this court. He did not move from his chair. Even after repeated request, he did not go. He even tried to go from the court without following the order made by this court.

(viii) The present matter is old one. This needs to be disposed of quickly as per direction of the Hon'ble Court. This court is of the view that without taking the accused Amber Imam Hashmi into custody, the trial of



this court is not possible to proceed further. Every possible effort is being taken by him to delay the trial. This court is of the confirmed opinion as reflected from the record that his bail bonds needs to be cancelled for misleading the court today and non-cooperation in trial.

(ix) Accordingly, the bail bonds of Amber Imam Hashmi is cancelled. He is directed to be taken into custody. So far as representation on behalf of Raja Hashmi, Anjar Hussian and Mobin Hashmi are concerned, it is allowed for today. They are directed to remain present on the next date of hearing. There is neither representation nor appearance on behalf of accused Isharat Belal Hashmi and Jasim Nadaf. They are directed to remain present on the next date of hearing, failing thereof, coercive measure would be taken to secure his presence. Since this court has been given to understand that Balal Hashmi and Jasim Nadaf have died, therefore, the office clerk is directed to seek status about his death report from the concerned police station.

(x) It is important to mention here that all the accused persons are known to each other as reflects from the record. This court skips to write several thing about the accused Amber Imam Hashmi because engagement for all those issued would cause deviation from the main purpose to run the course of justice anyhow in the larger interest of administration of Justice.

(xi) Put up on 23-06-2024 for completing the appearance.

(Suman Kumar Divakar)

Addl. Sessions Judge-III

Darbhanga.

7. In this connection it would be apposite to reproduce order dated 24.06.2025 as passed in Sessions Trial No. 326 of 1999 by learned Additional Sessions Judge III, Darbhanga, through which, petitioner Amber Imam Hashmi was granted provisional bail and same is as under:-

ST No. 326/1999
IN THE COURT OF ADDITIONAL
SESSIONS JUDGE-III,



DARBHANGA

Sessions Trial No. 326/1999

R. No. 3038/2014

24.06.2025: The matter is listed today for hearing on the bail petition dated 21.06.2025 filed on behalf of the accused Amber Imam Hashmi. Learned counsel for the accused Dr. Ashok Kumar Singh assisted by Sri Anand Alok is present before the court. Sri A. N. Jha, Public Prosecutor, Darbhanga assisted by Smt. Renu Jha, Addl. Public Prosecutor present before the court.

Dr. Ashok Kumar Singh submits that he seeks mercy for the reason that the accused is senior lawyer of Darbhanga Bar Association. However, he does not dispute the fact that the matter relates to commission of offence of murder and other serious offences and there is clear cut direction of the Hon'ble Court to conclude the trial as soon as possible. He also does not dispute the fact that the accused should have more sincere to extend the co-operation for conclusion of the trial. He further accedes to the fact that the accused should have followed the order of the court in the court room on 20.06.2025. He does not endorse the action made by the accused in the court room on 20.06.2025 when his bail bonds was cancelled and taken into custody. Finally, he seeks indulgence of this court to the extend that if the accused is released on bail, the sentiments of the members of the Darbhanga Bar Association would also be respected but he is clear to the fact that any person of whatsoever stature should be treated equally in the eyes of law.

Learned Public Prosecutor assisted by Additional Public Prosecutor has brought on record reply on behalf of the State duly served copy to the learned counsel for the accused in advance.

The State has serious objection with regard to grant bail to the accused. The State is of clear opinion that if accused is allowed to come out of jail, the conclusion of the trial is not possible. The States submits so on the basis of journey of this case for the last thirty years and the conduct of the accused as reflects from the record. It is further submitted by the State that the accused is in very dominant position and is well equipped with muscle and money and totally in a position to tamper with the witnesses. He has also relied on the judgement passed by the Hon'ble Madrass High Court titled as Saronraj @ Nagaraj versus State represented by the Inspector of Police [Criminal OP (MD) No. 14215 of 2024] wherein the Hon'ble High Court vide para-8 of the said judgement observed that the accused had filed petition under Section 317 of the Criminal Procedure Code, several times and it was considered mechanical manner. Further, vide para-



11, it is observed that if there is delay even in the committal proceeding then no witness have moral courage to come before the court to depose against the accused. This issue needs to be addressed. In sum and substance, the state is apprehensive of the fact that the witnesses may be threatened or tampered with by the accused.

Heard the parties. Considered the submission. This court is mindful of the fact that the accused has domination in the Darbhanga Bar Association but it is difficult to say such domination is either on positive side or negative side. It is also fact that the Hon'ble Court vide its final judgement dated 21.04.2015 passed in Criminal Miscellaneous No. 27216/2004 and further vide order dated 16.04.2015 passed in Criminal Miscellaneous No. 44013/2012 had been pleased to direct the trial court to conclude the trial expeditiously and further, preferably with six months. But it did not happen. Obviously, non-cooperation of the accused cannot be ruled out. Besides all these facts, this court is inclined to consider the submission of the learned counsel for the accused that he would cooperate in the trial and wait to see his conduct in the coming days. It is for the reason that the accused is a senior lawyer of prestigious Darbhanga Bar Association and almost all the important and respected members of the Bar are present before the court.

Therefore, this court is inclined to grant interim bail to the accused Amber Imam Hashmi for a period of one month from today pending final adjudication of this petition with following condition(s):-

- (i) the accused shall remain present on the date of hearing physically in the court.
- (ii) He will co-operate in the trial.
- (iii) He will not attempt to influence the witnesses or any other lawyer representing the side of the victim in any manner whatsoever.
- (iv) He will neither participate nor provoke any action in the premises of Civil Court, Darbhanga which may have potential to cause hindrance of administration of justice.
- (v) He will not use any objectionable words detrimental to administration of justice inside the Court room.
- (vi) He will not make any such behavior inside the court room to demean the authority of law save and except permissible within the law.

It is clarified that either the State or the victims would have liberty to move cancellation of interim bail so granted if there is any threat to the witnesses or otherwise which may cause hindrance in the completion of the trial.



Accordingly, it is directed that the accused Amber Imam Hashm. shall be released on interim bail for the period 24.06.2025 to 25.07.2025 on furnishing bail bond of Rs. 50,000/- of two sureties of the like amount each. He will file undertaking to follow the condition as mentioned in the order. One of the bailor will be close relative.

The further hearing on the bail application will be done on 25.07.2025. The main matter is listed on 27.05.2025 for evidence and other purposes.

Additional Sessions Judge - III Darbhanga

8. To understand the further factual aspects for preferring the present criminal quashing petition, it would be apposite to reproduce the order dated 20.06.2025 as passed in Sessions Trial No. 320 of 2010 by learned Additional Sessions Judge III, Darbhanga qua petitioner Kaushar Imam Hashmi, through which his bail bond was canceled and NBW was issued against him which is as under:-

“Sessions Trial No. 320/2010

CIS No. 3037/2014

(Arising out of

Bishanpur P.S. Case No. 58/1994)

Order 20-06-2025

The Present matter is listed today. There is sole accused Kaushar Imam Hashmi facing trial in this case. He is a senior criminal lawyer of Darbhanga Bar Association. The present case has been split up from Sessions Trial No. 326/1999 (CIS 3038/2014). Originally, there were two accused namely Amber Imam Hashmi and Qamar Imam Hashmi but this court is given to understand that Qamar Imam Hashmi has died during pendency of the trial.



Literally, the case relates to the year 1994.

(ii) The trial is running against murder of one person and injury to several others by fire arm. In other words, this is case of murder attempt to murder and other serious offences.

*(iii) It would be an apposite to place on record that the Hon'ble Court vide its Final Judgement dated 21-04-2015 passed in Criminal Miscellaneous No. 27216/2004 had been pleased to direct the trial court to conclude the trial expeditiously. Para 5 of the said judgment reads as **"since in this case discharge petition was rejected long back on 03-07-2004, while dismissing the present petition, it is desirable to direct the court below to proceed with the case expeditiously, so that the case may come to its logical end without unnecessary delay. While proceeding with the case, learned trial judge is required to take up this matter at least thrice in a week. Office is directed to communicate this order to the court below forthwith for its strict compliance."** Further, the Hon'ble Court vide its order dated 16-04-2015 passed in Criminal Miscellaneous No. 44013 of 2012 had been pleased to observe **"Since the criminal case was lodged way back in the year 1994 and since then more than 20 years have already elapsed, therefore, the learned trial court is further directed to take up the trial of the accused persons on priority basis and make all endeavours to conclude the same at an early date preferably within a period of six months from the date of receipt/production of a copy of the present order. The learned trial court shall not grant unnecessary adjournment merely on asking either on behalf of the prosecution or on behalf of the defence."***

*(v) It is also reflecting from the record that this accused has left no stone unturned to delay the trial. In this regard, the Order dated 06-06-2014 and 14-06-2024 passed by then learned District Judge, Darbhanga is an appropriate to refer to which has been confirmed by the Hon'ble Court on being challenged. The then learned District Judge Darbhanga vide its order dated 06-06-2014 had been pleased to observe vide para 5 that **"Considering the aforesaid facts and also considering the submissions of the learned Incharge PP and also the accused Kaushar***



Imam Hashmi, one application which I was filed on 03-06-2014 by the co-accused Amber Imam Hashmi is not maintainable and hereby rejected. The another application dated 03-06-2014 was filed by the accused Kaushar Imam Hashmi is only with a view to cast aspersion on judiciary. The accused persons are really acting against the interest of administration of justice. The application dated 03-06-2014 filed by the accused in which false and malicious statement made by them amount to scandalising the court and undermining the majesty of justice and therefore, the application dated 03-06-2014 filed by the accused Kaushar Imam Hashmi is hereby rejected. The proceedings of the trial of the present case shall be continued from day to day until all the prosecution witnesses in attendance have ben examined, irrespective of any hurdles that may be created by the accused persons." The conduct as mentioned in the order is just a tip of iceberg. It is an important to note that even the matters get delayed till date.

(vi) The profile of the accused is also needs to be taken into consideration. He is a practising advocate for the last 40 years in Darbhanga Judgeship. His two brothers and Co-accused are also practising lawyer in this court. One of them died during pendency of the case as submitted across the bench. They are highly influential not only in this court but beyond the court as well as sensed by this court while

being posted in this Judgeship.

(vi) Now, once after filing representation, his Junior submits that the Boss is not interested to come to this court though he has come to the court for other work. Obviously, this shows the audacity of the accused to fail the very administration of justice and further, to extend non- cooperation in the trial and such accused should not be entitled to enjoy liberty on the cost of administration of Justice. The court is obligated to maintain balance between the liberty of the accused and the victim's right.

(vii) The present matter is old one. This needs to be disposed of quickly as per direction of the Hon'ble Court. It is needless to place on record that the law is supreme. None can be allowed to play with law of the land and demean the administration of justice. This is a glaring example of non-cooperation that the



accused is in the court premises doing his job but he is not ready to come to the court where he is required to come to cooperate in the trial.

(viii) This court is of the confirmed opinion to obey the command of the Hon'ble Court and further, that the accused is so influential that without taking him into custody, the trial of this case is not possible. He will employ all means to cause hindrance in the course of justice. The command of the Hon'ble Court for this court is above all and this court is committed to ensure its execution at any cost.

*(ix) Accordingly, an application under Section 317 of the Criminal Procedure Code is hereby **dismissed**. His bail bonds stands cancelled. Office clerk is directed to issue NBW against the accused Kaushar Imam Hashmi.*

(x) Put up this case on 23-06-2025 awaiting the presence of the accused Kaushar Imam Hashmi.

(Suman Kumar Divakar)

Addl. Sessions Judge-III Darbhanga.

9. In this connection it would be further apposite

to reproduce the provision of Section 317 of the Cr.P.C. :-

“317. (1)At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.”

10. Mrs. Sinha, at first instance submitted that

two trial for the same occurrence is pending, one arising out of Bishanpur P.S. Case No. 58 of 1994, and another arising out Bishanpur P.S. Case No. 57 of 1994 being a



case and counter case trial of both cases must proceed in accordance with guidance as framed by the Hon'ble Supreme Court in ***Nathi Lal and Ors. vs. State of U.P. and Anr.*** reported in ***1990 Supp SCC 145*** which was further reiterated in ***State of M.P. vs. Mishrilal and Ors.*** reported in ***AIR 2003 SC 4089***.

11. It is also submitted that the main reason for rejection of representation of accused/ petitioners under Section 317 of Cr.P.C. appears to be out of personal knowledge of learned Presiding officer suggesting the biased approach of the Court for the only reason that the petitioners are active practitioners of the civil district court, Darbhanga, though she fairly conceded that accused petitioner namely, Amber Imam Hashmi was granted provisional bail by the learned trial court itself after four days of his judicial custody but the conditions which were imposed while granting provisional bail appears onerous and, therefore, the same should be deleted/ quashed from the provisional bail order dated



24.06.2025 and petitioner be allowed to remain on his earlier bail. It is further stated by Mrs. Sama Sinha that on the very same day the representation under Section 317(2) of Cr.P.C., of two accused persons were allowed by learned trial court, and thus there was no occasion to reject the representation of petitioners under Section 317 of the Cr.P.C. on the same very day.

12. In support of her submissions that learned trial court was biased, Mrs. Sinha relied upon the legal report of the Hon'ble Supreme Court as available through ***Avtar Singh and Anr. vs. State of M.P.*** reported in ***AIR 1982 SC 1260.***

13. It is submitted by Mrs. Sinha, that Section 317 of Cr.P.C. laid down a provisions that when inquiries and trial may be held in the absence of accused in certain cases, however, if the learned trial court find necessary *qua* appearance of the accused it may direct that the accused would no longer be represented on the next date by a pleader and would appear in person and if accused



failed to appear it would be open for the learned trial court for issuing warrant and proceed in accordance with the procedure prescribed in Chapter VI(A) of the Cr.P.C. and may also cancel bail and bail bond and to proceed in accordance with chapter XXXIII of the Cr.P.C.

14. In support of her submission Mrs. Sinha relied upon the legal report of this Hon'ble Court as available through ***Sandeep Kumar Tekriwal v. State of Bihar*** reported as ***2008 SCC OnLine Pat 254***

15. Mrs. Sinha, in support of her submission that learned trial court canceled the bail bond contrary to the aforesaid discussed provisions of law with a biased approach further relied upon the legal report of the Hon'ble Supreme Court as available through ***S. Parthasarathi v. State of A.P.*** reported in ***(1974) 3 SCC 459.***

16. Learned APP appearing for the State contradicting the submission as advanced by Mrs. Sinha, submitted that the fact of this case is different *qua*



aforesaid legal references and considering the fact that the matter has been pending before the court for trial since last 28 years for the occurrence which took place in the year 1994, there was no option before the learned trial court to impose such conditions having, no other option to secure speedy trial. It is submitted by learned APP that the learned trial court was under regular and repeated directions of this Court, as appears from the impugned order itself that the trial be concluded expeditiously. The petitioners are active practitioner of the civil court, Darbhanga and being well-versed with the procedural intricacies of law, deliberately exploiting legal loopholes with oblique motive to delay the trial. It is pointed out by learned APP that the date, on which impugned order was passed, i.e., 20.06.2025 the petitioner made an application under Section 317 before the learned trial court, however, after one hour he appeared in the same court in professional capacity and when his said conduct was questioned in view of reason



disclosed in his representation petition under Section 317 of Cr.P.C. he showed his rudeness and only thereafter his bail bond was canceled by learned trial court and he was taken into custody.

17. The presence of petitioner in professional capacity in another case on the same day before the same learned trial court, where representation under Section 317 of Cr.P.C was allowed before one hour is sufficient to gather that the petitioner, being an advocate is playing with the court proceedings. It is submitted that this is not a case when the court can proceed in the absence of accused as the trial is related to offences punishable under Section 302 of IPC, where every incriminating circumstances are essentially to be put before the petitioner being accused while recording their statement under Section 313 of the Cr.P.C.. Proceeding in *absentia* as available under Section 317 of the Cr.P.C. may further create a complex situation while recording the statement of the accused under Section 313 of Cr.P.C. Petitioners



being practicing advocates, are well acquainted with the intricacies and procedural safeguards of criminal law, and were found to be deliberately evading the process of law. In such circumstances, custodial intervention by way of arrest became the only efficacious recourse available to ensure their appearance to conclude trial expeditiously. Learned APP further submitted that now that one of the petitioner is on provisional bail and execution of NBW against another was also stayed, therefore, present quashing petition becomes infructuous. The conditions, which are said “onerous” are nothing but strict regulatory conditions to avoid further delay in trial. It is further pointed out by learned APP that both impugned orders are interim in nature, and therefore the accused petitioners must approach the learned trial court at first instance to modify the conditions as imposed while passing the final order, and at this stage it would not be appropriate to interfere with the conditions as none of the conditions *prima-facie* appears onerous; rather it is regulatory in



nature to secure the presence of the accused petitioners before the court for expeditious disposal of the case, which is pending since last 28 years.

18. However, learned APP conceded that the case and counter case must be heard together as per guidelines settled by the Hon'ble Supreme Court in view of the ***Nathi Lal case (supra)***.

19. The extreme pain as felt by learned trial court can be understood easily while authoring impugned order dated 20.06.2025, through which the bail bond of the petitioners was canceled, whereafter the petitioner, Amber Imam Hashmi, was taken into custody and NBW was issued against petitioner Kausar Imam Hashmi. It appears from the perusal of the impugned order that time and again several direction were given by this court for expeditious disposal of this case which has been pending for so many years for trial for the occurrence of the year 1994. The conduct of petitioner is just a tip of ice berg that can be easily understood from the fact that in the



case where he is accused a petition under Section 317 of Cr.P.C., was filed, whereas in another case, after a one hour, he appeared before the court in his professional capacity. This conduct of the petitioner is *prima-facie* evident of the fact that he was under the impressions that he is above the law and also that the learned trial court is without teeth, can't bite, only hiss for the simple reason that he is an active practitioner of the court. It is pertinent to note that even the junior counsel appearing on behalf fo the accused petitioner addressed the court by stating that **"Boss is not appearing today"** which further reflects the deliberate non-cooperative attitude of the petitioners and the impression sought to be conveyed by them, thereby undermining the authority and sanctity of the judicial process. Moreover, the petitioners no. 1 is on provisional bail, whereas the execution of NBW against petitioner no. 2, has already stayed by learned trial court itself, *prima-facie* making these petitions infructuous on this score.



20. As far proceeding qua case and counter case is concerned, in this context, it would be apposite to reproduce para 8 of the ***Mishrilal case (supra)*** which reads as follows:-

8. In the instant case, it is undisputed, that the investigating officer submitted the challan on the basis of the complaint lodged by the accused Mishrilal in respect of the same incident. It would have been just, fair and proper to decide both the cases together by the same court in view of the guidelines devised by this Court in Nathi Lal case [1990 Supp SCC 145 : 1990 SCC (Cri) 638] . The cross-cases should be tried together by the same court irrespective of the nature of the offence involved. The rational behind this is to avoid the conflicting judgments over the same incident because if cross-cases are allowed to be tried by two courts separately there is likelihood of conflicting judgments. In the instant case, the investigating officer submitted the challan against both the parties. Both the complaints cannot be said to be right. Either one of them must be false. In such a situation, legal obligation is cast upon the investigating officer to make an endeavour to find out the truth and to cull out the truth from falsehood. Unfortunately, the investigating officer has failed to discharge the obligation, resulting in grave miscarriage of justice.

21. In this context, it would be further apposite to reproduce paras 15 and 16 of the ***Sandeep Kumar Tekriwal case (supra)*** which reads as follows:-

15. Section 317, Cr. P.C. provides 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. P.C. 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, Cr. P.C. 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. P.C. 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. P.C. 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. P.C. 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 on his part.

16. *In the instant case, the learned magistrate not only rejected application under Section 317, Cr. P.C. but also cancelled the bail bond and issued non-bailable warrant of arrest by a composite order dated 28-6-2008, which is impermissible under Section 317, Cr. P.C. If the Magistrate did not think it appropriate to allow the representation of petitioner under Section 317 Cr. P.C. any more, it could have directed the petitioner to appear in person on dates next. Even then if petitioner or accused does not appear for reasons which do not seem valid to the Magistrate he may proceed to issue warrants as provided in Chapter VI of Cr. P.C. and cancel bail and bail bonds as engrafted in Chapter XXXIII, Cr. P.C. as noticed in para 16. The learned magistrate as such exceeded jurisdiction vested in him and exercised the same erroneously.*

22. In this context, it would be further apposite

to reproduce paras 15 and 16 of ***S. Parthasarathi case***



(supra) which reads as follows:-

15. *The question then is: whether a real likelihood of bias existed is to be determined on the probabilities to be inferred from the circumstances by court objectively, or, upon the basis of the impressions that might reasonably be left on the minds of the party aggrieved or the public at large.*

16. *The tests of “real likelihood” and “reasonable suspicion” are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision [see per Lord Denning, H.R. in Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon [(1968) 3 WLR 694 at 707]] We should not, however, be understood to deny that the Court might with greater propriety apply the “reasonable suspicion” test in criminal or in proceedings analogous to criminal proceedings.*

23. In this context, it would be also apposite to reproduce paras 1 and 2 of ***Avtar Singh case (supra)*** which reads as follows:-

1. *We see no substance in the grievance of the accused that they will not get a fair and impartial trial in the Court of the*



learned Sessions Judge, who is trying them, namely, the Court of Shri S.P. Khare. We, therefore, reject their prayer for transfer of the case to the Court of some other learned Judge.

2. One of the grounds on which the learned Sessions Judge is said to be biased against the accused is that he did not allow them to sit down during the trial. It is not right or proper that the accused were not provided with a sitting place during the trial which has gone on for the past seven months. We direct that the learned Sessions Judge will permit the accused to sit down during the trial. In fact, we are unable to understand how any Court in our country can at all insist that the accused shall keep on standing during the trial, particularly when the trial is long and arduous as in this case. We hope that all the High Courts in India will take appropriate steps, if they have not already done so, to provide in their respective Criminal Manuals prepared under Section 477(1) of the Criminal Procedure Code that the accused shall be permitted to sit down during the trial unless it becomes necessary for the accused to stand up for any specific purpose, as for example, for the purpose of identification. We need not add that the facility to be accorded to the accused for sitting down during the trial should not be construed as in derogation of the established convention of our courts that everyone concerned should stand when the Presiding Officer enters the court. With these observations we dismiss the special leave petition.

24. As far as the allegation of biasness and onerous conditions are concerned this court is of the view that the action which alleged to be taken under biased approach of learned trial court, was annexed and taken to uphold the majesty of law. The steps were taken correctly to give a message that none is above the law and to achieve the objective of “speedy trial” as matter is pending since last 28 years. Terms and conditions as imposed appears regulatory in nature to maintain the decorum of the Court.

25. This Court with available material failed to



gather any biased approach of the learned trial court towards petitioners.

26. A report was also called for from the SSP, Darbhanga which reveals that remaining prosecution witnesses would be examined within next six months.

27. Accordingly, there is no occasion to interfere with the impugned orders as passed by learned trial court, accordingly the present quashing petitions stand dismissed being devoid of any merit.

28. The speedy trial is not the right of the accused only, it is also the right of the victim also. However, by taking guiding note of the ***Nathilal case (supra)***, the cross case which was lodged for the same occurrence as Bishanpur P.S. case No. 57 of 1994, by petitioners side for which the Sessions Trial No. 395 of 1998 is pending before the Court of Additional Session Judge VII, Darbhanga/ or in any other court shall be transferred to the Court of Additional Session Judge III, Darbhanga, where the present case is pending and to



proceed accordingly.

29. Let a copy of this judgment be sent to the learned trial court forthwith.

30. Accordingly, pending I.A.’s disposed of in view of judgment.

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	AFR
CAV DATE	18.07.2025
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