

(2018) 2 Supreme Court Cases 472

(BEFORE KURIAN JOSEPH AND AMITAVA ROY, JJ.)

UPENDRA SHARMA . . . Appellant; a*Versus*

STATE OF BIHAR AND ANOTHER . . . Respondents.

Criminal Appeal No. 57 of 2018[†], decided on January 10, 2018

Criminal Procedure Code, 1973 — S. 439(2) — Application for cancellation of regular bail granted to appellant herein by trial court (i.e. Addl. Sessions Judge) — Filing of, before High Court by R-2 herein — Issuance of non-bailable warrant of arrest against appellant by High Court on filing of such application — Propriety of b

— Having regard to the procedure under law, held, such order was not justified — Hence, impugned order set aside — Appellant at liberty to appear before High Court and contest that application, which could be decided on its merits c
(Paras 1 and 2)

Amrita Kumari v. State of Bihar, 2015 SCC OnLine Pat 10398, *reversed*Appeal allowed W-D/59828/CRAdvocates who appeared in this case : d

V. Sushant Gupta (for Mushtaq Ahmad), Advocate, for the Appellant;
Gopal Singh, Manish Kumar, Shishir Pinaki and Rajiv Kr. Sinha, Advocates, for the Respondents.

Chronological list of cases cited on page(s)

1. 2015 SCC OnLine Pat 10398, *Amrita Kumari v. State of Bihar* (**reversed**) 472e-f

The Judgment of the Court was delivered by e

KURIAN JOSEPH, J.— Leave granted. The challenge is against the order dated 27-11-2015¹ by which the High Court has issued non-bailable warrants of arrest on the appellant herein on an application filed by Respondent 2 for cancellation of the regular bail granted by the trial court. f

[†] Arising out of SLP (Crl.) No. 277 of 2016. Arising from the Judgment and Order in *Amrita Kumari v. State of Bihar*, 2015 SCC OnLine Pat 10398 (Patna High Court, Crl. Misc. No. 53360 of 2015, dt. 27-11-2015)

1 *Amrita Kumari v. State of Bihar*, 2015 SCC OnLine Pat 10398, wherein it was directed: g

“This application has been filed for cancellation of bail granted to Opposite Party 2 by order dated 29-9-2015 passed by the 1st Additional Sessions Judge, Patna in connection with Special Case No. 103 of 2015 arising out of Khirimore PS Case No. 47 of 2015. Issue non-bailable warrant of arrest against Opposite Party 2 Upendra Sharma, son of late Nathun Sharma, resident of Village Khanpura PS Khirimore, District Patna. Put up immediately after the appearance of Opposite Party 2.” h

2. Going by the procedure under law, we find no justification for the Court issuing non-bailable warrant of arrest of the appellant herein on the application filed by Respondent 2. The impugned order is set aside. The appellant may appear before the High Court and contest the application. The Court is free to pass orders on the merits of the application. The appeal is allowed, as above. Pending applications, if any, shall stand disposed of. There shall be no orders as to costs.

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