

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.18129 of 2015

Arising Out of PS.Case No. -438 Year- 2014 Thana -MINAPUR District- MUZAFFARPUR

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1. Brijnandan Das S/o Shankar Das R/o Village- Hajratpur, P.S.- Minapur,
District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Amit Kumar Rakesh, Advocate

For the Opposite Party/s : Mr. Zainul Abedin(App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

2 01-07-2015 Heard learned counsel for the petitioner and the

State.

The petitioner has preferred the present application for bail in a case registered for the offences punishable under Sections 25(1-B)a , 26, 35 of the Arms Act and 17, 18, 19, 20, 21, 23 of the Unlawful Activities (Prevention) Act, 1967.

The petitioner earlier preferred an application for bail vide Cr. Misc. No. 6885 of 2015, under Sections 439 and 440 of the Cr.P.C. which was disposed of on 12.03.2015. The said order was passed in view of the ratio laid down by the Division Bench of this Court in Cr.W.J.C. No. 487 of 2014, (Aasif P.K. Alias Md. Aaripha alias Aasif alias Md. Aasipha alias Md. Aasif alias Aarif Vs. The State of Bihar and Others), reported in 2015 (1) P.L.J.R. 1017, wherein it is held that Section 2(1)(g) of National



Investigation Agency Act, 2008 defines scheduled offence as offence specified in the schedule. The Unlawful Activities (Prevention) Act, 1967 is item no. 2 in the schedule of the N.I.A. Act. Hence under the N.I.A. Act, 2008 the bail application is maintainable under Section 437 before the Special or the District Judge and against order of Special Judge appeal lies under Section 21(4) of the N.I. A. Act, 2008 before Division Bench of the High Court. Hence, the earlier application under Section 439, 440 of the Cr.P.C. was treated to be not maintainable under Sections 439 and 440 of the Code of Criminal Procedure. Consequently the petitioner preferred fresh application before the learned Sessions Judge-Cum-Special Judge, Muzaffarpur which was dismissed on 18.05.2015. Subsequently a Full Bench of this Court in Criminal Appeal No. 149 of 2015 and other analogous cases (Badahur Kora Vrs. The State of Bihar & other analogous cases) reported in 2015 (2) P.L.J.R. 289, obliterated the view of the Division Bench to the effect that the scheduled offences under the N.I. Act can be governed under the Act when the N.I.A. either investigates the scheduled offence or transfers the case with permission of Central Government to State Government. Hence, the present application under Section 439, 440 of the Cr.P.C.

The prosecution case is that on informant that near house of co-accused Deeplal Sahni the extremist

gather to commit offence raid was laid leading to arrest of Dasrath Ram, Deeplal Sahni, petitioner and Shashi Ranjan Kumar. Though from the other co-accused country made pistol were recovered, but from the petitioner some extremist pamphlet/literature were recovered.

It is submitted by the learned counsel for the petitioner that petitioner has no criminal antecedent and only on suspicion the accusation has been levelled.

Considering the aforesaid fact, let the above named petitioner, be released on bail on furnishing bail bonds of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Sessions Judge-Cum-Special Judge, Muzaffarpur in connection with Minapur P.S. Case No. 438 of 2014.

(Dinesh Kumar Singh, J)

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