

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.48080 of 2015

Arising Out of PS.Case No. -281 Year- 2007 Thana -BHAGALPUR KOTWALI District-
BHAGALPUR

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AJAY KUMAR GHOSHAL, SON OF LATE TARA PADDO GHOSHAL,
RESIDENT OF MOHALLA- TILKAMANJHI, POLICE STATION-
TILKAMANJHI, DISTRICT- BHAGALPUR.

.... PETITIONER/S

VERSUS

THE STATE OF BIHAR

.... OPPOSITE PARTY/S

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Appearance:

For the Petitioner/s : Mr. Vidhya Keshari Kumar, Sr. Adv.
Mr. Ajay Mukherjee, Adv.

For the State : Mr. J.N.Thakur(App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

04 03-12-2015

Heard learned counsel for the petitioner.

Instant petition has been filed on behalf of custodial
accused Ajay Kumar Ghoshal who along with other co-accused
were held guilty and sentenced by the learned lower court of
Additional Sessions Judge, IV, Bhagalpur in connection with
Sessions Trial No.14 of 2008 / 637 of 2008, on whose behalf
different appeals were preferred which were conjointly disposed
of vide judgment dated 28.08.2014 whereby and whereunder
retrial was directed after setting aside the judgment of conviction
and sentence recorded by the learned lower court on account of
prevalence of infirmities, so traced out as is evident from the
judgment (Annexure-1/C), which was heard, on priority basis as
directed by co-ordinate bench while hearing over bail matter as the

petitioner along with other co-accused were under custody, however no independent order was made in the judgment (1/C) relating to bail, hence petitioner moved before the learned lower court and having rejected therefrom, moved before this Court.

At the stage of investigation, petitioner was granted bail by the Apex Court (Annexure-1/A) after having his prayer of bail rejected by this Court (Annexure-1).

During course of hearing, judgment (Annexure-1/C) has been gone through and from para-30 thereof, it is evident that there happens to be presence of call details (Exhibit of the L.C. record) having in between the petitioner along with his wife (a co-accused) on the date and time of occurrence which was not available at an earliest while hearing bail petition because of absence of reference of the same in the order. (Annexure-1)

Therefore, at the present moment, while considering the prayer for bail, the court enquired about nature of call details as is an exhibit of the record whereupon the learned counsel for the petitioner became enraged and insitridly submitted that by such action court is in a mood to supplement the judgment. Furthermore, it happens to be, as submitted, that as the judgment impugned has been set aside on account thereof, the pre-trial stage substitutes and as the petitioner was availing privilege of bail



granted by the Hon'ble Apex Court, therefore, he should be allowed to remain on that bail. In the aforesaid background, it has also been submitted that the action of the court insisting upon the document happens to be unheard of and has further stated in open court that matter is to be taken to the Supreme Court on this score. By such attitude of the learned counsel for the petitioner it is evident that, he wants to coerce or put undue stress upon the court to come in toe instead of passing an independent order.

During course of submission, it has also been submitted that while passing the judgment, the lower court record was before this Court and on account thereof, this Court should have gone through the material instead of calling for the same as well as has also submitted that this should have been incorporated in the judgment. Subsequently thereof, the learned counsel, under his arrogant behaviour forbidden the court to pass otherwise order than the present one. On account thereof, neither the Additional P.P. nor learned counsel for the informant have been heard.

Criminal court has got no power to review or recall its own order and on account thereof, the submission made on behalf of petitioner happens to be unrealistic, more particularly, on the score that whatever been incorporated in the judgment, that cannot be supplemented subsequently by way of any action which,

if taken, would be against the law. Moreover, the court had only opined to test the veracity of the call details, which was an exhibit of the record, and which were not available of an earlier occasion as is evident from annexure(1), as has not find place therein.

So far other part of the submission is concerned, on account of babel attitude of the learned counsel for the petitioner, the court with painful thought finds better to give him an opportunity to place the plea before the Hon'ble Apex Court at his end alone so that Hon'ble Court could see how the matter is being tackled as well as in what manner the learned senior counsel present themselves, put undue pressure in different manner, even terrorizing the courts, in order to snatch order and consequent thereupon, prayer for bail is rejected.

(Aditya Kumar Trivedi, J.)

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