

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.16347 of 2015

Arising Out of PS.Case No. -412 Year- 2002 Thana -PHULWARI District- PATNA

1. Sandip Kumar Son of Late Krishna Kumar Singh, Resident of Mohalla -
Sipara Harichandrapur, P.S. - Phulwari Sharif, District - Patna.
..... Petitioner/s

Versus

1. The State of Bihar.
2. Ashok Singh, S/o Sri Anteryami Singh, Resident of Village - Sarbadhi,
P.S. Masaurhi, District - Patna.
..... Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Santosh Kumar Singh
For the Opposite Party/s : Mr.Lalit Kishore, Principal
Addl.AdvocateGeneral with Dilip Kumar
Sinha(APP)

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER

3 30-04-2015 This application is filed with a prayer to cancel the bail
granted by this Court through its order dated 10-3-2015 in
Criminal Miscellaneous No. 49463 of 2012.

The case has certain peculiar facts, some of which were
not before this Court when the bail was granted to opposite party
no.2. The opposite party no.2 figured as an accused in S.T.No.
1130 of 2011 on the file of learned Additional Sessions Judge-IV,
Patna, and is facing trial for offences punishable under sections
302, 307 and 34 of the Indian Penal Code. He was arrested on 6-5-
2011. Thereupon, he filed bail petition before the trial court, and
on such petition being dismissed, he filed Criminal Miscellaneous



No. 49463 of 2012. The learned single Judge who heard the matter on 17-7-2013 observed that he is not at all convinced to grant bail, but issued direction to the trial court to expedite the trial and submit a report as to the progress. The matter was directed to be listed after six months. Thereafter, the matter was listed before me on 10-3-2015. By taking note of the fact that the petitioner is in jail since 6-5-2011, the bail was granted to opposite party no.2.

In the present application, it is pointed out that on 17-7-2013 this Court declined to grant bail, and in fact, the information was furnished to the Court is to the effect that bail was rejected and two more subsequent occasions, in Criminal Miscellaneous No. 15016 of 2014 and Criminal Miscellaneous No. 45373 of 2014 bail was rejected on 9-4-2014 and 10-12-2014 respectively. According to the petitioner, in the facts referred to above, grant of bail on 10-3-2015 is not proper.

Heard Mr. Santosh Kumar Singh, learned counsel for the petitioner and Mr. Lalit Kishore, Principal Additional Advocate General for the State.

On entertaining serious doubt as to whether the present petition is maintainable, assistance was sought from the Principal Additional Advocate General. Without going deeper into that aspect, it is proceeded on the basis that the application is

maintainable.

The assumption of the petitioner, who is the complainant in the case, that Criminal Miscellaneous No. 49463 of 2012 was dismissed on 17-7-2013, is not correct. After expressing disinclination to grant bail, the learned single Judge observed as noted below:

“I am not at all convinced with the aforesaid submissions of learned counsel for the petitioner.

The learned trial court has reported that charge against the petitioner was framed on 3-9-2011 and one prosecution witness has already been examined. Petitioner is in jail custody since 8-5-2011 and up till now, one prosecution witness could be examined.

It appears that the learned trial court is not paying proper attention towards this fact that petitioner is in jail custody since long and up till now, trial of the petitioner could not be concluded. Moreover, the learned trial court is directed to expedite the trial of the petitioner and try to conclude the same as early as possible and shall report about progress of trial to this court after six months from the date of receipt of this order.”

The fact that two more applications were filed and rejected, was not brought to the notice of this Court, when the

matter was taken up on 10-3-2015. While dealing with those two applications, the learned single Judge took note of the order dated 17-7-2013 passed by him in Criminal Miscellaneous No. 49463 of 2012. It is not as if the order dated 17-7-2013 was passed in Criminal Miscellaneous No.49463 of 2012, after it was finally disposed of.

Be that as it may, it is brought to the notice of this Court that all the prosecution witnesses were examined before the trial court. Therefore, the very apprehension that if released on bail, the opposite party no.2 i.e., the accused may threaten the witnesses, ceases to exist. The time and again Hon'ble Supreme Court observed that the under trial detention cannot be a permanent feature, and it is only in exceptional cases, that a person can be kept in prison during trial even after the investigation is completed and chargesheet is filed. Each day of illegal detention would amount to trampling on the rights of detenu.

Having regard to the facts and circumstances, this Court is not inclined to recall the order granting bail to opposite party no.2. The petition is rejected.

B.Roy/-

(L. Narasimha Reddy,CJ)

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