

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.19533 of 2015

Arising Out of PS.Case No. -222 Year- 2013 Thana -SHERGHATI District- GAYA

Bhola Yadav, son of Ashok Yadav, resident of village-Asri P.S. Magadh University, District-Gaya.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar-Advocate

For the Opposite Party/s : Mr. Uma Shanker Pd. Singh- (A.P.P.)

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

04 03-07-2015 Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor.

The Senior Superintendent of Police, Gaya is physically present along with show-cause.

The mechanical approach of Senior Police Official as well as discharging their duty in perfunctory manner, even while supervising the case, more particularly, so far this particular case is concerned, wherein the victim herself had disclosed her age to be 15 years, none had identified application of POCSO Act, during initial stage though accused has been apprehended and is under custody since 08.07.2013. The prosecution agency further gone in deep slumber without acknowledging that by putting a person behind bar, actually axe upon his fundamental right. More

particularly non-production of witnesses during course of trial, a chronic case which the subordinate judiciary is facing since long on account of apathy of police official is another circumstance. This case happens to be glaring example on this very score.

At an earlier occasion, prayer for bail of petitioner was rejected vide Cr. Misc. No.53660 of 2013 dated 14.07.2014, being a rapist of a minor girl, revisited on account of long detention without any substantial progress in the trial and on account thereof, vide order dated 12.05.2015, the Superintendent of Police, Gaya was directed to produce the remaining charge sheet witnesses. That order was personally served, but without any fruitful result. In the aforesaid background, vide order dated 25.06.2015, the Superintendent of Police, Gaya was accordingly directed to be physically present as well as to explain with regard to disobedience of the Court's order and then, woke up, collected the witnesses, produced before the Court and for the present, while filing show-cause, it has been disclosed that learned lower court has found the case to be under POCSO Act and on account thereof, differing examination of witnesses, the matter has been taken up for hearing on that very count.

Being a heinous offence, the case during course of investigation might have proceeded under the lens of the



Superintendent of Police, being a supervising authority. Age of the victim itself is incorporated in the written report that has gone unheeded during course of investigation and on account thereof, chargesheet was simply submitted under Section 376 I.P.C. along with other allied Sections and not under POCSO Act. In similar way, the police officials reacted during course of trial whereunder, it is their obligation to produce witnesses.

On one pretext or other as well as taking the present changed scenario in his protection that now, the matter is pending for hearing over application of POCSO Act and further, undertaking that since after there will be compliance of the Hon'ble Court's order in its true spirit, unconditional apology has been solicited which could not have been appreciated by the Court, had there been no change in stage of the trial before the learned lower court.

Accordingly, show-cause is accepted, but with a warning that henceforth, the Superintendent of Police should be sincere and more attentive towards the cases in which accused happens to be under custody. Crime meeting are not for simply seeing the faces of Investigating Officers. It is also for regularizing the trial so that witnesses should be brought up before the Court to avoid further complication. Mere arrest of an accused is not going

to give any fruitful result till the day, he is convicted on the basis of the evidence having been produced by the prosecution during course of trial and for that, the Superintendent of Police is accountable.

So far merit of the case is concerned, that had already been taken note of. Furthermore, in the changed scenario also, did not give any ground for reconsideration.

Accordingly, prayer of petitioner for bail is rejected.

The learned lower court is directed to expedite the trial, more particularly even if, there happens to be addition of charge then relevant provisions are there whereunder trial is to be governed, subsequently.

Vikash/-

(Aditya Kumar Trivedi, J)

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