

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.37340 of 2014

Arising Out of PS.Case No. -336 Year- 1998 Thana –GARDANIBAGH (SHASTRI NAGAR)
District- PATNA

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Satish Pandey, son of Sri Ramashish Pandey, resident of village- Nayagaon
Tulasia, PS. Mirganj, District Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar
2. Central Bureau of Investigation, Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vikas Ratan Bharti

For the Opposite Party/s : Mr. Ashok Kumar (App)

For the C.B.I. Mr. Bipin Kumar Sinha, SC, CBI.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

C.A.V. ORDER

- 8 08-09-2015 1. This petition has been filed under Sections 439 and 440 of the Cr.P.C. for grant of bail to petitioner who is in jail custody since 27.09.2011 in R.C. Case No. 4(S)/99 arising out of Gardanibagh (Shastri Nagar) P.S. Case No. 336 of 1998 registered for the offences punishable under Sections 302, 307/34, 120B, 379 of the Indian Penal Code and Section 27 of the Arms Act.
2. I have already heard all the parties.
3. It is needles to narrate the entire prosecution case and suffice to say that petitioner along with two others namely, Munna Shukla and Rajan Tiwari opened fire on the deceased, Lakshmeshwar Sah, who happened to be shadow of deceased, Brij Bihari Prasad, a Member of Legislative Assembly. The aforesaid

Brij Bihari Prasad is said to have killed by other accused.

4. It was submitted on behalf of the learned counsel for the petitioner that petitioner was remanded in the present case on 27.09.2011 and since then he is languishing in jail custody. It was further contended by him that some of co-accused including Munna Shukla and Rajan Tiwari were put on trial before the trial court and they were convicted vide judgment dated 12.08.2009 passed in Sessions Trial No. 613 of 2002. The conviction and sentence order of aforesaid co-accused were challenged before this court in Cr. Appeal (D.B.) No. 878 of 2009 and other analogous cases and conviction and sentence order of those co-accused persons were set aside by the Division Bench of this Court vide judgment dated 24.07.2014. It was also pointed out by learned counsel appearing for the petitioner that co-accused, Munna Shukla and Rajan Tiwari were granted privilege of bail during course of their trial. It was further contended by him that the learned Appellate Court scrutinized and analyzed the evidence of the prosecution adduced in course of trial of those accused persons in detail in judgment dated 24.07.2014 and after that set aside the judgment of conviction of those co-accused persons. It was further contended by him that prosecution relies upon the same evidence in respect of trial of the petitioner which has not still commenced

though petitioner is in jail custody since long and, therefore, it is needless to keep the petitioner behind the bar in connection with above stated case.

5. Learned counsel for the petitioner referred following decisions in support of his above stated contentions :-

(1). 2005(3) ACR 3196 Kalamuddin

Khan vs. State of U.P. and another in which a Bench of Allahabad High Court taking note of this fact that when the main accused was acquitted for want of evidence, the trial of other accused for similar offence is hit by principle of stare decisis.

(2). 2005(3) JIC 243 (Allahabad) Sanju

@ Sanjeev Kumar vs. State of U.P. and another in which it has been held by a Bench of Allahabad High Court that if two persons are prosecuted under two different trials for the same offence on the basis of same evidence and one accused is acquitted of the charge in one trial, the continuation of trial of other accused is nothing but only an abuse of process of the court and principle of stare decisis is applicable.

(3). 2004(1) JIC 508 (Allahabad)

Narayan Rai vs. State of U.P. and another in

which almost similar view was expressed by the Allahabad High Court and

(4). (2005) (1) JIC 748 (SC) in which the Hon'ble Apex Court held that once the main accused, who is alleged to have hatched the conspiracy and who had the motive to kill the deceased was discharged and when that matter had attained finality, it was justified in holding that no purpose would be served in further proceeding with the case against the other accused.

6. On the other hand, learned counsel appearing for the C.B.I. vehemently opposed the prayer submitting that the alleged occurrence took place in the year 1998 but petitioner could be remanded in this case in the year 2011. It was further contended by him that no doubt, some co-accused faced trial before the trial court and their conviction and order of sentence was set aside by the Appellate Court but it is well settled principle of law that the evidence recorded in course of trial of those accused cannot be read in respect of the petitioner in course of his trial. In support of his contention, he referred following decisions:-

(1) A.I.R. 1974 SC 21 (Bhagwan Tana Patil vs. The State of Maharashtra in which it has



been held by the Apex Court of this country that if the evidence of the prosecution witnesses is not firm and save enough to be relied upon with regard to the part assigned to the acquitted accused in the occurrence, is no ground to reject it mechanically against the other accused also and the maxim 'falsus in uno falsus in omnibus' is not to be blindly invoked in appraising evidence.

(2) 1999 (3) PLJR 335 Rajan Rai vs. State of Bihar in which the Division Bench of this court held that acquittal of some of the accused in the same trial cannot be a ground for acquittal of other accused persons.

(3) 2006(1) PLJR (SC) 419 Rajan Rai vs. State of Bihar in which it has been held by Apex Court of this country that the judgment of acquittal rendered in the trial of other accused is wholly irrelevant in respect of trial of another accused as the said judgment is not admissible under the provisions of Sections 40 to 44 of the Indian Evidence Act.

7. Two unreported orders passed in Cr. Misc. No. 29217 of 2009 dated 16.09.2010 as well as Cr.W.J.C. No. 247 of

2008 dated 09.09.2008 were also cited on behalf of the C.B.I.

8. Para 3 of the petition reveals that petitioner was made accused in altogether 38 cases and out of the aforesaid 38 cases, in 26 cases petitioner was acquitted, in two cases he was discharged, in three cases he was granted bail, five cases are pending at trial stage whereas two cases are pending for commitment.

9. It is pertinent to note here that the present occurrence took place in the year 1998 and in the present case, petitioner was named as shooter and after institution of the present case, petitioner was made accused in altogether 16 cases and therefore, it prima facie appears that even after institution of the present case, petitioner appears to have committed serious offences for which he was made accused in different cases but it would appear from perusal of para 3 of the petition that in most of the cases, which were registered against the petitioner after institution of the present case, either he was acquitted or was granted privilege of bail.

10. It is an admitted position that co-accused, Munna Shukla and Rajan Tiwari against whom there was allegation that they along with this petitioner opened fire on the deceased, Lakshmeshwar Sah causing his death, have already been acquitted

by the Appellate Court but admittedly, petitioner could be remanded in this case in the year 2011 and he did not face trial along with the aforesaid co-accused persons.

11. No doubt, it is well settled principle of law that evidence recorded in course of trial of an accused cannot be read in respect of another accused who has not faced trial with the accused in whose trial the evidence was recorded but in the present case, it would appear from the judgment pronounced by the Division Bench of this court on 24.07.2014 in Cr. Appeal (D.B.) No. 878 of 2009 and analogous cases that the learned Division Bench of this court doubted the entire prosecution evidence adduced in course of trial of other accused and there is nothing on the record to show that except those evidence prosecution has to adduce any other more evidence against the petitioner. In my view, when a Division Bench of this Court already discarded the evidences adduced by the prosecution in course of trial of other accused for convicting those accused persons and there is no new evidence available against the petitioner, it is needless to keep the petitioner behind the bar.

12. So far as the decisions cited on behalf of the C.B.I. are concerned, the same are not applicable in the present matter because it is not a question of application of Maxim of 'falsus in

uno falsus in omnibus.’

13. On the basis of aforesaid discussions, I think it proper to allow this petition and accordingly, this bail petition is allowed and it is ordered that petitioner, above named, be released on bail on furnishing bail bonds of Rs. 50,000/- (Fifty Thousand) with two sureties of the like amount each to the satisfaction of Special Judicial Magistrate, C.B.I- I, Patna in connection with R.C. Case No. 4(S)/99 arising out of Gardanibagh (Shastri Nagar) P.S. Case No. 336 of 1998, subject to condition that one of the sureties must be close relative of the petitioner who shall swear an affidavit disclosing this fact as to how he is related with the petitioner. Furthermore, if the petitioner is released on bail or acquitted in other all cases instituted against him, he shall attend the trial court in person on each and every date for the period of one year or till conclusion of his trial whichever is earlier and if he fails to do so on two consecutive dates without any genuine cause, the learned trial court shall be at liberty to cancel the bail bonds of the petitioner after making proper enquiry.

(Hemant Kumar Srivastava, J)

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