

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.898 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

Laxmi Rai, son of Late Jugeshwar Rai, resident of Village/Mohalla-Bishunpur
Pankadi, Patna-8 00 002, P.S.-Beur, District-Patna.

.... Petitioner

Versus

1. The State of Bihar.
2. The Director General of Police, Bihar, Patna.
3. The Senior Superintendent of Police, Patna, Bihar.
4. The Superintendent of Police (City), Patna, Bihar.
5. The Deputy Superintendent of Police, Kankarbagh, Patna, Bihar.
6. The Officer-in-charge, Beur Police Station, Patna, Bihar.

.... Respondents

Appearance :

For the Petitioner/s : Mr. Kameshwar Prasad Sinha, Advocate

For the Respondent/s : Mr. Krishna Kumar Singh, AC to GP-17

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 19-03-2015

Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner is a named accused in Beur P.S. Case No.
22 of 2011 dated 23.01.2011 registered under Sections 307, 320,
120B read with 34 of the Indian Penal Code and 27 of the Arms
Act. On conclusion of investigation, the police have submitted
charge sheet against him.



On perusal of the police report, the learned Magistrate has taken cognizance of the offence and after complying with the requirements of Section 207 of the Code of Criminal Procedure, the case has been committed to the Court of Sessions for trial. The matter is pending before the learned *Ad hoc* Additional Sessions Judge-VII, Patna for framing of charge. One of the co-accused namely, Surendra Kumar had filed a petition for discharge under Section 227 of the Code of Criminal Procedure in the Sessions Court on 11.11.2013. After hearing the parties, the learned Additional Sessions Judge-VI, Patna rejected the application on 11.11.2013 and directed the accused persons to be physically present on 18.11.2013 for framing of charges.

Learned counsel for the petitioner has submitted that till date charges have not been framed and on 1.3.2014 the petitioner has filed an application seeking stay of the further proceeding of the case on the ground that the matter is being further investigated by the C.I.D. under Section 173(8) of the Code of Criminal Procedure. The said application filed on behalf of the petitioner has already been rejected by the court below vide order dated 18.07.2014.

The aforesaid order dated 18.07.2014 passed in Sessions Case No. 1188 of 2011/7942 of 2014 by the learned *Ad hoc* Additional Sessions Judge-VII, Patna is under challenge before this

Court.

In case of **Surendra Singh & Ors. v. The State of Bihar and Ors.** reported in **1990 (2) PLJR 693**, a Special Bench of this Court has categorically held that where appeals or revisions, applications or applications under Section 482 of the Code of Criminal Procedure are maintainable before the High Court. There is no question of exercise of power under Article 226 of the Constitution of India.

In view of the law laid down by the Special Bench in the case of **Surendra Singh & Ors. (supra)**, this application under Articles 226 and 227 of the Constitution of India is not maintainable as the petitioner has an equally efficacious remedy available to him under Section 482 of the Code of Criminal Procedure.

Accordingly, this application is dismissed as not maintainable.

(Ashwani Kumar Singh, J.)

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