

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.33629 of 2013

Arising Out of PS.Case No. -164 Year- 2011 Thana -SAHEBPUR KAMAL District- BEGUSARAI

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1. Md. Kamal @ Kalam S/O Md. Issamul Resident Of Village Fatehpur,
P.S- Sahebpur Kamal, District- Begusarai.

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dudh Nath Singh

For the Opposite Party/s : Mr. Parmanand Pd.(App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 11-01-2017 This application has been filed for quashing order dated 05.07.2013 passed by the learned Additional Sessions Judge-II, Begusarai in Sessions Trial No.95 of 2013 whereby and whereunder he rejected the discharge petition filed by the petitioner under Section 227 of the Code of Criminal Procedure.

The prosecution story in short is that Khurshid Alam lodged fardbeyan on 14.09.2011 that at about 08.30 P.M., Md. Abdul @ Mantua, Md. Bhadai and Md. Kamalm abused him on the behest of Md. Israfil @ Bhattu Sardar and thereafter they assaulted him with lathi, knife and fists, resulting injury to him. The people of nearby took him to the Primary Health Centre,



Sahebpur Kamal and thereafter he was referred to the Sadar Hospital, Begusarai.

On the basis of the aforesaid fardbeyan, Sahebpur Kamal P.S.Case No.164 of 2011 dated 14.09.2011 has been recorded for the offence under Sections 147, 148, 149, 323, 324 and 307 of the Indian Penal Code and the police, after investigation, submitted charge sheet No.11/12 dated 31.01.2012. After cognizance, the case was committed to the court of Sessions and at present it is pending before the Additional Sessions Judge-II, Begusarai . It further appears from the record that the petitioner filed application for discharge under Section 227 of the Code of Criminal Procedure before the trial court, which was rejected by the Additional Sessions Judge-II, Begusarai in Session Trial No. 95 of 2013.

It is submitted on behalf of the petitioner that he has made specific averment in the petition under Section 227 of the Code of Criminal Procedure that at the time of occurrence, he was in custody, which will appear from order-sheet (Annexure-5) of the petition and while hearing the bail application also, the report was called for from the I.O. of this case, who submitted a report



that Kamal and Kalam are same person, on the basis of that, they were released on bail by the learned District and Sessions Judge but without considering the facts, the learned court below has dismissed the application for discharge of the petition without passing any finding or observation in the aforesaid averment of the petition. As such the order rejecting the discharge petition of the petitioner is error apparent on the record, hence the impugned order 05.07.2013 is fit to be quashed.

Heard learned counsel for the Opposite Party No.2 as well as learned A.P.P. also.

Learned Counsel for the Opposite Party No.2 has submitted that as a matter of fact that Kamal and Kalam are two different persons and both are sons of Md. Israfil and on the basis of that the charge-sheet has been submitted and the case has been committed to the court of Session.

Having heard both sides. In view of the fact that there is clear submission in the petition that the petitioner was in custody and he has given document in support of his contention, however, the learned court below has not given any opinion or comment on that averment of the petitioner and passed the



order rejecting the discharge petition in mechanical way.

In view of the fact that the order dated 05.07.2013 passed by the Additional Sessions Judge –II, Begusarai is set aside and the matter is remitted back to the court below for considering afresh after perusal of the documents submitted by the petitioner as well as the materials available on the record, and to pass appropriate order.

This application is allowed.

(Vinod Kumar Sinha, J)

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