

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21740 of 2017

Arising Out of PS.Case No. -404 Year- 2004 Thana -SAMASTIPUR COMPLAINT CASE District-
SAMASTIPUR

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Ram Nath Singh son of Late Ram Pukar Singh, Resident of Village- Hemanpur,
Police Station- Mohiuddinnagar, District- Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Veena Devi wife of Ram Nath Singh, daughter of Baidyanath Singh, Resident of Village- Hemanpur, Police Station- Mohiuddinnagar, District- Samastipur, presently resides at village- Balkishanpur Morwa, P.S.- Vidyapatinagar, District- Samastipur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Arun Kumar Rai, Advocate
For the Informant	:	Mr. Deepak Kumar Singh, Advocate
For the State	:	Mr. Satyendra Narayan Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-07-2017

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

2. This application has been filed under Section 482 of the Code of Criminal Procedure (for short 'the CrPC') has been filed by the petitioner for quashing the order dated 03.04.2017 passed by the learned Sessions Judge, Samastipur in Cr.Appeal No.19 of 2017 whereby the appellate court has directed the petitioner to surrender in the court below in order to make his appeal maintainable before the appellate court.

3. The facts of the case are not in dispute. The petitioner along with others was tried for the offences punishable under Sections 323, 498-A and 494 of the Indian Penal Code (for short 'the IPC').



On completion of trial, the learned A.C.J.M., Dalsigsarai held the petitioner guilty of the charges under the aforementioned Sections of the IPC. He was sentenced for a term of six months under Section 323 of the IPC, for a term of two years under Section 498-A of the IPC and for a term of five years under Section 494 of the IPC vide judgment dated 04.03.2017 passed in Complaint Case No.404 of 2004/Trial No.290 of 2017. Since the petitioner was on bail from before he was granted provisional bail by the court of Magistrate in exercise of power conferred under Section 389(3) of the CrPC as the petitioner intended to prefer an appeal against the judgment and order of conviction and sentence. Thereafter, he filed Cr.Appeal No.19 of 2017 in the Court of Session Judge, Samastipur and prayed that the provisional bail granted to him by the learned Magistrate under Section 389(3) of the CrPC be confirmed till the final disposal of the appeal. However, the learned Public Prosecutor appearing for the State raised an objection that since the petitioner was sentenced to undergo rigorous imprisonment for five years under Section 494 of the IPC by the court of Magistrate, it had no power to release him on provisional bail in exercise of power conferred under Section 389(3) of the CrPC.

4. The learned Session Judge, Samastipur, after hearing the parties, vide order dated 03.04.2017 upheld the objection raised by the learned Public Prosecutor and directed the petitioner to first surrender



before the court below in order to make his appeal maintainable before the appellate court.

5. Assailing the aforestated order dated 03.04.2017 passed in Cr. Appeal No.19 of 2017 by the learned Session Judge, Samastipur in the present application preferred under Section 482 of the CrPC, learned counsel for the petitioner has submitted that the court below has grossly erred in law as it has failed to appreciate the provision prescribed under Section 389(3)(ii) of the CrPC. He has submitted that where the offence of which a person has been convicted is bailable one and he is on bail irrespective of the sentence awarded, the court of Magistrate is legally empowered to grant provisional bail in exercise of power conferred under Section 389(3) of the CrPC. He has submitted that the petitioner was all along on bail during trial and, thus, the learned Magistrate had committed no illegality in allowing him provisional bail as the petitioner intended to prefer an appeal against the judgment and order of the court of Magistrate and there was no reason for refusing bail.

6. On the other hand, learned counsel for the State and the learned counsel for the informant submitted that there is no error in the order passed by the learned Session Judge, Samastipur. They have submitted that the discretion whether to enlarge the petitioner on bail or not was in the appellate court and if the appellate court found the order granting bail to the petitioner erroneous in law, as the petitioner



was convicted and sentenced for a term of five years, no illegality can be found in the order passed by the appellate court.

7. I have heard learned counsel for the parties and perused the record. I find substance in the argument advanced by the learned counsel for the petitioner.

8. Section 389 of the CrPC deals with suspension of sentence of a convicted person pending the appeal and release of the convict on bail. Clause (1) and Clause (2) of Section 389 of the CrPC deals with a situation where a convicted person can get an order of bail from the appellate court after filing of criminal appeal. Sub.Section (3) of Section 389 of the CrPC deals with a situation where the appellate court itself can grant bail to a convicted accused enabling him to prefer an appeal. It reads as under:

“389(3). Where the convicted person satisfies the court by which he is convicted that he intends to present an appeal, the Court shall, -

(i) where such person, being on bail, is sentenced to the imprisonment for a term not exceeding three years, or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail,

Order that the convicted person be released on bail unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate



Court under sub-section (i), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.”

9. It would be evident from the provision prescribed under sub-section (3) of Section 389 of the CrPC that the same would be applicable in the following conditions:

- (a) The court must be the convicting court;
- (b) The accused must be convicted by the court;
- (c) The accused must express his intent to prefer an appeal before the appellate court;
- (d) There should be a right of appeal.

10. If all these conditions are fulfilled then in that case the court by which an accused is convicted may exercise power to release the convict on bail provisionally in the following conditions:

- (i) Where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or
- (ii) where the offence of which such person has been convicted is a bailable one and he is on bail.

11. Coming back to the facts of the present case, it is an admitted position that the petitioner was on bail on the date he was convicted by the court of Magistrate. It is also an admitted position that Section 494 of the CrPC is a non-cognizable, bailable and compoundable offence with permission of the court. As the offence was bailable one and the petitioner was on bail on the day of conviction, no illegality can be found with the order passed by the



learned Additional Chief Judicial Magistrate by which he has granted bail to the petitioner after convicting him under Section 494 of the IPC and sentencing him for a term of five years, the appellate court has clearly erred in law as it has failed to take notice of the expressed provision prescribed under Clause (ii) of sub-section (3) of Section 389 of the CrPC.

12. In that view of the matter, the impugned order passed by the appellate court cannot be sustained. Accordingly, the order dated 03.04.2017 passed by the learned Session Judge, Samastipur in Cr. Appeal No.19 of 2017 to the extent whereby the petitioner has been directed to surrender in the court of Magistrate is set aside. The matter is remanded back to the learned Session Judge, Samastipur. He shall hear the appeal of the petitioner in Cr. Appeal No.19 of 2017 on merits and pass orders in accordance with law.

13. The appeal stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

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