

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.2870 of 2018

Arising Out of PS.Case No. -289 Year- 2004 Thana -BARIYARPUR District- MUNGER

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Ashish Paswan son of Mukhtar Paswan @ Mukeshwar Paswan, resident of
Bilia, P.S.- Kharagpur, District -Munger.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajit Kumar Singh, Advocate

For the State : Mr. Bipin Kumar, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR
SINGH**

ORAL ORDER

6 10-10-2018 Heard learned counsel for the appellant and learned
counsel for the State.

2. This appeal is directed against the judgment of conviction and sentence dated 16.05.2018 passed by the F.T.C-II, Munger, in Session Trial No.666 of 2005 whereby the appellant has been held guilty of the charges under Sections 324 and 341 of the Indian Penal Code (for short 'I.P.C.') and Sections 25(1-B)(a), 26 and 27 of the Arms Act and sentenced to undergo rigorous imprisonment for three years under Section 324 I.P.C., one month under Section 341 I.P.C., rigorous imprisonment for two years under Section 25(1-B)(a) of the Arms Act and rigorous imprisonment for three years under Sections 26 and 27 of the Arms Act and all the sentences were ordered to run concurrently.



3. Since the sentence to imprisonment awarded to the appellant was for a term not exceeding three years and the appellant was on bail prior to his conviction, being satisfied that the appellant intended to prefer an appeal against the judgment, the trial court in exercise of its powers conferred under Section 389(3) of the Code of Criminal Procedure granted the appellant provisional bail in order to present the appeal before the appellate court.

4. The appeal against the impugned judgment of conviction and sentence was not preferred by the appellant till the time it was barred by law of limitation. It was filed on 03.08.2018 but without any application for condonation of delay caused in filing the appeal.

5. As the appeal was defective, registry placed the case under the heading “For Orders (On Office Notes)”. Vide order dated 07.08.2018, at the request of learned counsel for the appellant, the case was adjourned for three weeks. However, the appellant neither surrendered within three weeks nor removed the other defects, as pointed out by the registry. When the appeal was again taken up on 29.08.2018, learned counsel did not appear before the Court. However, the appeal was adjourned further for four weeks. Again on 01.10.2018, when the appeal was taken up,



learned counsel for the appellant prayed for a week's time in order to enable the appellant to surrender before the court below and file an affidavit in this regard. At the request of the learned counsel, the appeal was adjourned for a week. Thereafter, on 09.10.2018, again when the matter was taken up, no one appeared to press the application. In this background, today, when the appeal has been taken up, on query, learned counsel for the appellant submitted that till date the appellant has not surrendered before the court below. He also stated that no application for condonation of delay caused in filing the appeal has been filed.

6. Since the appellant was granted provisional bail by the court below in exercise of its powers conferred under Section 389(3) of the Code of Criminal Procedure, either the appellant should have filed an appeal in time before this Court or if the appeal was barred by limitation, he ought to have surrendered before the court below.

7. The provisional bail under Section 389(3) of the Cr.P.C. is granted by the trial court to a convict in order to present an appeal before the appellate court in time. It cannot be made operative for an indefinite period. The appellant has also not made any prayer for condonation of delay caused in filing the appeal.

8. As the appellant is neither on bail nor is in jail and



the appeal is barred by law of limitation, I am left with no other option but to dismiss the same. It is dismissed, accordingly.

9. Registry shall communicate the order to the court below forthwith for the needful.

(Ashwani Kumar Singh, J)

Md.S./-

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