

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.222 of 2018**

Arising Out of PS.Case No. -15 Year- 2016 Thana -JAMHORA District- AURANGABAD

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Shashi Ranjan Sharma aged about 37 years, son of Sri Yamuna Prasad Singh @ Yamuna Sharma, R/O Village- Kusumi, PS-Pauthu, Distt-Aurangabad (Bihar) at present R/O Brahmharsi Chowk near Durga Mandir, PS-Town, Distt-Aurangabad (Bihar)

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Sangram Singh, Adv.  
Mr. Pravin Kumar Sinha, Adv  
Mr. Nirbhay Prasant, Adv.  
Mr. Akash Chaudhary, Adv.

For the Respondent/s : Smt. Pronati Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**  
**ORAL ORDER**

2      23-01-2018                      Heard learned counsel for the appellant as well as learned APP.

2. By order dated 14.09.2017 passed in Cr. Appeal No. 42/2017, the learned Sessions Judge, Aurangabad has refused to accede with the prayer made on behalf of appellant to grant him bail after suspending sentence till pendency of the appeal in terms of Section 389(1) CrPC, on account thereof, the instant appeal has been preferred under Section 389(2) of the CrPC.

3. Gone through the order impugned.

4. Under criminal jurisprudence, there happens to be presumption of innocence of an accused till he is found and held guilty by a competent court. That happens to be the reason behind



that during consideration of prayer for bail in terms of Sections 437, 438, 439 of the CrPC, the matter is being looked into under the garb of aforesaid presumption. Whenever an accused is convicted, that presumption irrespective of the fact that the conviction happens to be under challenge evaporates. Therefore, whatever be the parameters during course of consideration of prayer having made during course of trial is not the parameter to be considered during course of adjudicating the prayer made under Section 389(1) of the CrPC. Though, no straitjacket formula has been framed by the Hon'ble Apex Court but, right from ***Kashmira Singh's*** case as reported in ***(1977) 4 SCC 291*** detention has been taken into consideration, a prime factor inconsonance with the other components having been so prescribed therefor.

5. Apart from this, whenever prayer is made, the appellate court is bound to see and scrutinize the material available on record on its face whether the same could be taken into consideration while allowing or rejecting the prayer of the appellant. That means to say, cryptic order is not at all warranted, on the other hand, reasoned order should be while deciding the matter in favour of appellant or against the appellant.

6. Be that as it may, from the order impugned it is evident that instead of peeping into merit inconsonance with the



submission, the learned lower court had rejected the prayer only on the ground that during course of trial prayer for bail of appellant was rejected by the high court. That being so, the order impugned is set aside. Appeal is allowed.

7. The matter is remitted back to the learned appellate court to hear the parties and pass a reasoned order.

**(Aditya Kumar Trivedi, J)**

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