

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.3033 of 2018

Arising Out of PS.Case No. -569 Year- 2017 Thana -KHAZANIHAT District- PURNIA

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1. Ranjit Kumar Yadav, son of Gayanand Yadav,
 2. Santosh Kumar Goswami @ Santosh Goswami, son of Raghunandan Goswami
@ Raghunath Goswami.

Both are residents of village- Saifganj, P.S.- Forbesganj, District- Araria.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mrigendra Kumar, Advocate

For the State : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 27-09-2018

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

2. This appeal under Section 389(2) of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed by the appellants challenging the order dated 26.06.2018 passed by the learned 1st Additional Sessions Judge, Purnea in Cr. Appeal No.15 of 2018 arising out of G.R. Case No.3099 of 2017 corresponding to Trial No.159 of 2018 whereby in appeal their prayer for grant of bail till the pendency of the appeal has been rejected by the appellate court. The appellants were prosecuted for the offences punishable under Sections



25(1-B)(a), 26 and 35 of the Arms Act.

3. After completion of trial, the Jurisdictional Magistrate convicted them under Sections 25(1-B)(a), 26 and 35 of the Arms Act. They were sentenced to undergo rigorous imprisonment for three years under Section 25(1-B)(a) and simple imprisonment for one year for the charges under Sections 26 and 35 of the Arms Act. They were also sentenced to pay a fine of rupees five thousand each on all counts of the charges and on failure to deposit the fine, they were directed to undergo simple imprisonment for a further period of six months.

4. Being aggrieved by the judgment of the Jurisdictional Magistrate, the appellants preferred an appeal in the Court of Sessions under Section 374(2) of the Cr.P.C., which has already been admitted. An application under Section 389(1) of the Cr.P.C. was also filed on their behalf for suspension of sentence and grant of bail during the pendency of the appeal. However, the appellate court rejected their prayer for bail vide impugned order dated 26.06.2018.

5. Being aggrieved by rejection of the application preferred under Section 389(1) of the Cr.P.C. by the appellate court, the appellants have preferred the instant application under Section 389(2) of the Cr.P.C. before this Court.

6. Learned counsel for the appellants submitted that the



conviction of the appellants has been recorded merely on conjecture and surmises and no cogent evidence was led before the Jurisdictional Magistrate on the basis of which he could have arrived at a finding of guilt against the appellants. He contended that no independent witness came forward to support the case of the prosecution. The appellate court, however, rejected the application for bail mechanically without application of judicial mind.

7. On the other hand, learned counsel for the State contended that the judgment passed by the Jurisdictional Magistrate does not suffer from any illegality or irregularity. The prosecution has proved its case by adducing cogent and reliable evidence. He contended that since the appeal is still pending before the court below, it would not be proper for this Court to grant bail to the appellants during pendency of the appeal.

8. Having heard the parties, I am of the opinion that since the appellate court after looking into the materials available on record did not find it proper to grant bail to the appellants during pendency of the appeal and there is no material on the basis of which this Court can reach to the conclusion that the discretion exercised by the appellate court is erroneous or perverse, the order impugned cannot be set aside.



9. However, Since the appeal is admitted and the records are available, it is desirable that the appeal itself be decided on merits expeditiously.

10. Accordingly, while dismissing the appeal, I direct the learned 1st Additional Sessions Judge, Purnea to hear the appeal of the appellants on merits and decide the same within two months from the date of receipt/production of a copy of this order. After disposing of the appeal, he shall be required to submit a report to this court regarding outcome of the appeal.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N.A.
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