

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.25778 of 2018

Arising Out of PS.Case No. -115 Year- 2013 Thana -BIBHUTIPUR District- SAMASTIPUR

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Gaurav Kumar @ Shubham @ Gaurav Kumar Roy @ Shambhu S/o Late
Girish Rai, R/o Vill.- Belsandi Tara, P.S.- Bibhutipur, District- Samastipur.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Jitendra Singh, Sr. Advocate
Mr. Vinay Mistry

For the Opposite Party/s : Mr. Kalyan Shankar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

2 20-06-2018 Heard Mr. Jitendra Singh, learned Senior Advocate

for the petitioner and learned Additional Public Prosecutor for the

State.

The petitioner has renewed his prayer for bail in
connection with Sessions Trial No. 172 of 2014, arising out of
Bibhutipur P.S Case No. 115 of 2013 registered for offences
under Sections 302/34 of IPC and 27(1) of the Arms Act pending
before the trial court after framing of charges.

It is submitted by the learned Senior Advocate for
the petitioner that vide order dated 22.06.2016 passed in Cr.
Misc. No. 1336 of 2016 while rejecting the application for grant
bail, this Court had granted liberty to the petitioner to renew his
prayer for bail before the court below if the trial is not concluded
within one year from the date of production of the petitioner form



Hajipur jail. Thus, on completion of one year from the date of production from Hajipur jail, since no substantial progress could be made in trial, the petitioner renewed his prayer for bail before the court below, but the same has been rejected vide order dated 27.03.2018 considering the gravity of the offence and the fact that three out of the eight prosecution witnesses have already been examined. He submitted that the last witness on behalf of the prosecution was examined on 09.11.2017 and, since then, no witness has turned up to depose before the trial court. He submitted that the petitioner is in jail since 01.01.2014 and charges were framed as back as on 24.06.2015 and there is no likelihood that the trial of the case would conclude in near future.

Learned Additional Public Prosecutor for the State has opposed the application for grant of bail to the petitioner. He submitted that according to the prosecution case, the petitioner is alleged to have fired open the son of the informant from pistol from a close range causing injury over his head as a result of which he fell down and died. The daughters-in-law of the informant, namely, Manju Devi and Sunita Devi had seen the occurrence and they are eye witnesses to the occurrence. The informant and the other two witnesses have already been examined before the court below and they have corroborated the prosecution case in material particular. He submitted that only on



account of delay in conclusion of trial, the petitioner cannot be granted the privilege of bail looking to the gravity of the offence.

I have heard learned advocates for the parties and carefully perused the record.

While rejecting the prayer for bail of the petitioner on 22.06.2016, this Court had observed as under :-

“The trial court is hereby directed to ensure that the trial of the case must proceed expeditiously. The District Magistrate and the Superintendent of Police, Samastipur are also directed to ensure production of witnesses during trial without any delay. In case the petitioner has not yet been brought Samastipur Jail from Hajipur Jail, the trial court must take all necessary steps in this regard so that the petitioner is immediately brought to Samastipur.

In case the trial is not concluded within one year from the date of production of the petitioner from Hajipur Jail, the petitioner would be at liberty to renew his prayer for bail before the court below itself.

Let a copy of this order be transmitted to the District Magistrate and the Superintendent of Police, Samastipur by Fax forthwith.”

It is unfortunate that even though the District Magistrate and the Superintendent of Police, Samastipur were



directed to ensure production during trial, no witness has been produced before the trial court after 9th November, 2017 even the official witnesses like the investigating officer and doctor have not been examined so far.

To ensure production of witnesses expeditiously is the duty of the State. The District Magistrate and the Superintendent of Police being the superior officers in the district are mainly responsible to ensure production of witnesses before the court in time. The right to speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined under Section 21 of the Constitution of India. An under trial accused cannot be kept in jail for an indefinite period specially when the State fails in its duty to produce witnesses. I say no more.

Keeping in mind the gravity of the offence and the right to speedy trial of the accused, the application for bail of the petitioner is rejected at this stage. The court below is directed to take all possible steps to conclude trial as early as possible, preferably within nine months from the date of receipt/production of a copy of this order.

The District Magistrate and the Superintendent of Police, Samastipur are once again directed to ensure production of witnesses before the trial court without any undue delay.



In case, the trial is not concluded within nine months from the date of receipt/production of a copy of this order, the petitioner shall have a right to renew his prayer for bail.

Registry is directed to communicate a copy of this order to the District Magistrate and the Superintendent of Police, Samastipur forthwith.

(Ashwani Kumar Singh, J.)

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