

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1685 of 2018

**Arising Out of PS.Case No. Police Station Case No. 195
Year 2012 Thana Bhagwan Bazar District Saran**

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Amritesh Prabhakar, Son of Shiv Mohan Singh, resident of village- Dharampura,
Police Station- Doriganj, District- Saran (Chapra) **Petitioner**

Versus

1. The State of Bihar through the Principal Secretary, Home Department,
Government of Bihar, Patna.
2. The Inspector General, Prison, Bihar, Patna.
3. The Jail Superintendent, District Jail Chapra, District- Saran.

.... **Respondents**

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Appearance :

For the Petitioner : Mr. Bashistha Narayan Mishra, Advocate

For the State : Mr. Prabhu Narayan Sharma, AC to AG, Bihar

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date: 11-10-2018

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

2. Through this writ application the petitioner seeks
direction to the respondents to release him, as according to him he is
illegally in jail custody despite the fact that he has already served the
sentence awarded in Trial No. 306 of 2018/1345 of 2018, arising out
of Bhagwan Bazar PS Case No. 195 of 2012 registered under
Sections 420, 467, 468, 471 and 120(B) of the Indian Penal Code, for
which he was facing charge under Sections 420, 467, 468, 471 and
120(B) of the Indian Penal Code.



3. The short facts which would be necessary for considering the lis stand enumerated as under:-

Bhagwan Bazar PS Case No. 193 of 2012 was registered against the petitioner on 6.10.2012 under Sections 420, 467, 468, 471 and 120(B) of the Indian Penal Code on the basis of written report of District Programme Officer (Planning and Accounts) Saran, Chapra. On the next day i.e. on 7.10.2012 again an FIR was lodged being Bhagwan Bazar PS Case No. 195 of 2012 on the basis of FIR lodged by District Education Officer, Saran at Chapra. The petitioner was taken into custody in the first case i.e. Bhagwan Bazar PS Case No. 193 of 2012 and on 22.6.2013 he was remanded in Bhagwan Bazar PS Case No. 195 of 2012. In the first case i.e. Bhagwan Bazar PS Case No. 193 of 2012, a judgment of conviction was passed by the Court on 4.6.2016 and he was sentenced to undergo rigorous imprisonment for a period of five years coupled with fine under Section 467 IPC, three years coupled with fine under Section 420 IPC. Further four years rigorous imprisonment under Section 468 and one year under Section 471 of the Indian Penal Code. However the second case i.e. Bhagwan Bazar PS Case No. 195 of 2012 remained pending, which was finally decided by convicting the accused and imposing sentence of four years and ten months rigorous imprisonment under Section 468 IPC; four years



rigorous imprisonment under Section 467 IPC; one year rigorous imprisonment under Section 471 IPC and three months rigorous imprisonment under Section 420 IPC and all the sentences were directed to run concurrently. It has further been observed that the period undergone by him as under trial prisoner would also be adjusted in the sentence.

4. The controversy is with regard to such adjustment, as according to the petitioner the period during which he has remained in custody as under trial prisoner in Bhagwan Bazsar PS Case No. 195 of 2012 after his remand on 22.6.2013 till conviction should be adjusted or set off so that he could be released. In the first case i.e. Bhagwan Bazar PS Case No. 193 of 2012 Criminal Appeal No. 26 of 2016 has been preferred before the Sessions Judge which is still pending. However, despite order of bail having been granted in the Appeal in his favour on 29.06.2016, he could not be released in view of the trial which was going on in the second case i.e. Bhagwan Bazar PS Case No. 195 of 2012.

5. The petitioner's case is that the period commencing from 22.6.2013 till the date of conviction in the second case should be treated as set off, whereas the case of the State is that in view of the fact that he was convicted in Bhagwan Bazar PS Case No. 193 of 2012 on 4.6.2016 and, the period after 4.6.2016, which has been



spent by the writ petitioner in custody, cannot be set off as he was undergoing sentence after conviction in the aforesaid case.

6. Learned Counsel has drawn attention of this Court to the provisions contained under Section 428 of the Code of Criminal Procedure to impress upon us that such period which has been undergone as under trial prisoner has to be adjusted at the time of considering set off. He places reliance upon the decision of the Apex Court rendered in **State of Maharashtra and another vs. Najakat Alia Mubarak Ali [(2001) 6 Supreme Court Cases 311]** as also two decisions of the Division Bench of this High Court in **Shambhu Nath Singh vs State of Bihar & others** and in **Shree Kant Pandey & ors Vs.State of Bihar & ors. 2003 (1) PLJR 747** and **2005(2) PLJR 514**

7. Learned Counsel appearing for the State in support of his submission has placed reliance upon the decision rendered by the Apex Court in **Atul Manubhai Parekh v. CBI (2010) 1 SCC 603** as also decision of the Division Bench of this Court in **Butan Sah Vs. The State of Bihar & others 2015 (4) PLJR 396.**

8. However, another Division Bench of this Court by judgment dated 17.8.2017 has also considered this matter in **Cr.W.J.C. No. 818 of 2017 Harishchandra Prasad Vs. The State of Bihar & ors.** In the aforesaid case, the cases decided by Hon'ble



Apex Court in **Najakat Alia Mubarak Ali (Supra)** as well as **Atul Manubhai Parekh (Supra)** as also the decision rendered by a Division Bench of this Court in **Butan Sah (supra)** have been considered. After considering the decisions and the relevant provisions the Division Bench has come to the conclusion that the period between the conviction in one case and conviction in another case cannot be treated as under trial prisoner in the second case for the purpose of set off.

9. The propositions are settled and binding upon this Court. But the declaration of law, taken note of herein above would apply in the facts and circumstances which have been discussed therein. In the instant case, the position is completely different.

10. The distinct factual matrix in the instant case is that there is a development in between his conviction in the first case and the second case. On 29.6.2016 the petitioner was allowed bail in Cr.Appeal No. 26 of 2016 arising out of Bhagaw Bazar Police Station Case No. 193 of 2012 wherein the trial court had convicted him on 4.6.2016.

11. What is relevant to consider here is that subsequent to the order dated 29.6.2016 of learned Sessions Judge, Saran at Chapra rendered in Cr.Appeal No. 26 of 2016, allowing the petitioner's prayer for bail, the consequence is that the petitioner was



entitled to be released from custody and his sentence was to remain suspended till disposal of the appeal. The only reason the petitioner could not be released as a result of order of bail in Cr. Appeal on 29.6.2016 is the fact that he was required to be in detention for the purpose of investigation, enquiry or trial in the second case arising out of Bhagwan Bazar Police Station Case No.195 of 2012.

12. After 4.6.2016, i.e., the date of conviction in the earlier case arising out of Bhagwan Bazar Police Station Case No. 193 of 2012, the petitioner was serving the sentence only upto 29.6.2016, i.e., the date of grant of bail to the petitioner in appeal. Thereafter the petitioner was in custody as an under trial prisoner upto his conviction in the second case on 5.5.2018.

13. From the facts of the case taken note of herein above it is obvious that in between 29.6.2016, upto 5.5.2018 the petitioner was in custody/detention as an under trial prisoner in Bhagwan Bazar Police Station Case No. 195 of 2012. Had Bhagwan Bazar Police Station Case No. 195 of 2012, not being pending for trial the petitioner would have been released on bail immediately upon suspension of his sentence and grant of bail under order dated 29.6.2016 passed on his Criminal Appeal No. 26 of 2016.

14. In the facts and circumstances of the case, this Court would observe that the petitioner would be entitled to the benefit of



set off for the period 29.6.2016, i.e., the date of grant of bail in Cr.Appeal No. 26 of 2016 and conviction in Bhagwan Bazar Police Station 195 of 2012 on 5.5.2018, as the same is the period of detention in the later case covered by the expression “during the investigation, enquiry or trial of the same case and before the date of such conviction” as occurring in Section 428 of the Cr.P.C.

15. The accused has a statutory right arising out of Section 428 of the Cr.P.C. but set off against the sentence of imprisonment for the period of detention undergone by the accused during investigation, enquiry or trial of the same case and before the date of conviction in the same. Such statutory right of the accused can be denied only if otherwise he is serving the sentence as a convict as a result of earlier conviction. That is not the case here after 29.6.2016, i.e., the date of grant of bail in Cr. Appeal No. 26 of 2016 arising out of the earlier conviction dated 4.6.2016 in Bhagwan Bazar Police Station Case No. 193 of 2012 the petitioner was not serving a sentence as a convict, but was in detention under trial in Bhagwan Bazar Police Station Case No. 195 of 2012.

16. In view of the aforesaid consideration, we are of the view that the petitioner is entitled to set off against the sentence of imprisonment in Bhagwan Bazar Police Station Case No. 195 of 2012 for the period of detention undergone in connection with trial



arising out of the same case in between 29.6.2016 uptil his conviction in the said case on 5.5.2019.

17. The writ petition is allowed to the extent indicated herein above.

(Dr. Ravi Ranjan, J)

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25.10.2018
Transmission Date	25.10.2018

