

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.4747 of 2018

Arising Out of PS. Case No.-12 Year-2018 Thana- GAYA RAIL P.S. District- Gaya

Md. Sonu Son of Md. Shahid Resident of Mohalla-West Sarai Ward
No.14,P.S. Kotwali,Distt Gayat.-

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sudhir Kumar Sinha
For the Respondent/s : Smt. Abha Singh

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 30-01-2019 Heard learned counsel for the appellant as well as
learned Additional Public Prosecutor.

Instant memo of appeal has been preferred at the end
of the appellant against an order dated 17.09.2018 passed by the
Additional Sessions Judge-IIInd, Gaya in Cr. Appeal No.75 of
2018/30 of 2018, whereby and whereunder prayer for bail in
terms of Section 389(1) of the Cr.P.C. has been rejected.

Gone through the order impugned. The operative
portion of the order reads as follows:-

*“From perusal of the F.I.R. and case diary. It appears that
petitioner was apprehended by local passengers on the spot and the bag.
Which was stolen from the informant was recovered from possession of the
petitioner. Besides that the petitioner is involved into more cases. Bearing
Kotwali P. S. Case No.383 of 2013 for offence u/s 302 and 201 of I.P.C.*



and Kotwali P.S. Case No.470/2015 for the offences under Section 379 and 411 of I.P.C.

Considering the facts and circumstances of the case, I am not inclined to enlarge the petitioner on bail. The prayer for bail is accordingly rejected.”

Mode of consideration of bail under Section 389(1) of the Cr.P.C. that means to say, post conviction stage is different from mode of consideration of prayer for bail at pre-conviction stage in accordance with Section 439 Cr.P.C. At post conviction stage, the materials available on the record so produced during course of trial is to be seen in consonance with the finding recorded by the convicting Court. From perusal of the order impugned, it is evident that learned Appellate Court had not considered the prayer in accordance with Section 389(1) of the Cr.P.C..

That being so, the order impugned is set aside. Appeal is allowed. The matter is remitted back to the learned Appellate Court to consider afresh in accordance with Section 389(1) of the Cr.P.C.

(Aditya Kumar Trivedi, J)

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