

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1300 of 2017

Arising Out of PS.Case No. -26 Year- 1990 Thana -C.B.I CASE District- PATNA

1. Mangala Nand Jha (M. N. Jha), aged about 66 Years, Son of Late Satanjeev Jha, Resident of Village- Baruar, P.S.- Laukna, District- Madhubani, Bihar, Ex Branch Manager, S.B.I., ADB Branch, Benipur, Darbhanga.

.... Appellant/s

Versus

1. The State of Bihar Through The Central Bureau of Investigation/anti Corruption, Patna.

.... Respondent/s

with

Criminal Appeal (SJ) No. 1410 of 2017

Arising Out of PS.Case No. -27 Year- 1990 Thana -C.B.I CASE District- PATNA

1. Mangala Nand Jha (M. N. Jha), aged about 66 years, S/o Late Satanjeev Jha, resident of Village- Baruar, P.S.- Laukna District- Madhubani, Bihar. Ex-Branch Manager, S.B.I., A.D.B. Branch Benipur, Darbhanga.

.... Appellant/s

Versus

1. The State of Bihar Through The Central Bureau of Investigation / Anti Corruption, Patna.

.... Respondent/s

with

Criminal Appeal (SJ) No. 1025 of 2017

Arising Out of PS.Case No. -25 Year- 1993 Thana -C.B.I CASE District- PATNA

1. Arvind Kumar Singh, Son of Late Ram Kripal Singh, Resident of C/o Mathura Singh, Pokhara Mohalla, Town Thana Hajipur, District- Vaishali, Permanent Resident of Village- Dayachapra, P.S.- Bairiya, District- Balia, Village Nagla, P.S.- Malsalami, District- Patna.

.... Appellant/s

Versus

1. The State of Bihar through Central Bureau of Investigation, Patna.

.... Respondent/s

with



Criminal Appeal (SJ) No. 1185 of 2017

Arising Out of PS.Case No. -40 Year- 1988 Thana -C.B.I CASE District- PATNA

1. Sakaldeep Kumar Paswan, son of Late Faudar Ram resident of Mohalla - Mathia Dih, P.S. - Chatauni, District - East Champaran.

.... Appellant/s

Versus

1. The State Through C. B. I. / A. C. B. , Patna.

.... Respondent/s

with

Criminal Appeal (SJ) No. 1182 of 2017

Arising Out of PS.Case No. -4 Year- 1990 Thana -C.B.I CASE District- PATNA

1. Dinesh Singh, Son of Ram Jurawan Singh Resident of Village : Dharampur (Jetkauli), P.S. : - Vaishali, District : - Vaishali.

.... Appellant/s

Versus

The Central Bureau of Investigation Through Its Director, Bihar, Patna

.... Respondent/s

with

Criminal Appeal (SJ) No. 1197 of 2017

Arising Out of PS.Case No. -4 Year- 1990 Thana -C.B.I CASE District- PATNA

1. Binay Kumar, Son of Kameshwar, Resident of Village-kali Tanr, P.S. Bhagwanpur, District-Vaishali

.... Appellant/s

Versus

1. The Central Bureau of Investigation Through Its Director, Bihar, Patna

.... Respondent/s

with

Criminal Appeal (SJ) No. 1304 of 2017

Arising Out of PS.Case No. -4 Year- 1990 Thana -C.B.I CASE District- PATNA

1. Jai Narain Singh, S/o- Ram Subhag Singh R/v- Suhagpur, Madan, Chapra, P.S. Paru, Distt- Muzaffarpur.

.... Appellant/s

Versus

1. The Union of India Through Central Bureau Investigation



.... Respondent/s

with

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Criminal Appeal (SJ) No. 936 of 2017

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Arising Out of PS.Case No. -39 Year- 1988 Thana -C.B.I CASE District- PATNA

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1. Madhusudan Jha, son of late Tej Narayan Jha resident of village - Hathauri, P.S. Haya Ghat, District - Darbhanga at present residing at Mohalla - Sikandarpur, Dhobi Ghat, P.S. Sadar Town Muzaffarpur (T), District - Muzaffarpur.

.... Appellant/s

Versus

1. The State of Bihar Through C. B. I..

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.1300 of 2017)

For the Appellant/s : Mr. Uday Shankar Choudhary-Advocate

For the Respondent/s : Mr. Sanjay Kumar-(SC,CBI)

(In CR. APP (SJ) No.1410 of 2017)

For the Appellant/s : Mr. Uday Shankar Choudhary-Advocate

For the Respondent/s : Mr. Sanjay Kumar-(SC,CBI)

(In CR. APP (SJ) No.1025 of 2017)

For the Appellant/s : Mr. Arun Kumar-Advocate

For the Respondent/s : Mr. Sanjay Kumar-(SC,CBI)

(In CR. APP (SJ) No.1185 of 2017)

For the Appellant/s : Mr. Kumar Kaushik-Advocate

For the Respondent/s : Mr. Sanjay Kumar-(SC,CBI)

(In CR. APP (SJ) No.1182 of 2017)

For the Appellant/s : Mr. Ambika Bhagat-Advocate

For the Respondent/s : Mr. Bipin Kumar Sinha-(SC,CBI)

(In CR. APP (SJ) No.1197 of 2017)

For the Appellant/s : Mr. Ambika Bhagat-Advocate

For the Respondent/s : Mr. Bipin Kumar Sinha-(SC,CBI)

(In CR. APP (SJ) No.1304 of 2017)

For the Appellant/s : Mr. Vijay Kumar Sinha-Advocate

For the Respondent/s : Mr. Bipin Kumar Sinha-(SC,CBI)

(In CR. APP (SJ) No.936 of 2017)

For the Appellant/s : Mr. Ravi Bhardwaj-Advocate

For the Respondent/s : Mr. Bipin Kumar Sinha-(SC,CBI)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV ORDER

Date: 17-08-2017

As common question of law is involved in all these



appeals, on account thereof, are being disposed of by a common order.

2. **Criminal Appeal (S.J.) No.1300 of 2017** arises out of Special Case No.8 of 2011, R. C. Case No.26A of 1990 wherein appellant, **Mangala Nand Jha** has been sentenced for an offence punishable under Section 120B read with Section 420, 468, 471, 477A of I.P.C. and sentenced to undergo rigorous imprisonment for five years as well as fine of Rs.10,000/- and in default thereof, to undergo simple imprisonment for six months, under Section 420 I.P.C. sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.10,000/- and in default thereof, to undergo simple imprisonment for six months, under Section 468 I.P.C. sentenced to undergo rigorous imprisonment for five years as well as to pay fine of Rs.10,000/- and in default thereof, to undergo S.I. for six months, under Sections 468 and 471 I.P.C. sentenced to rigorous imprisonment for five years and to pay fine of Rs.10,000/- and in default thereof, to undergo S.I. for six months, for an offence under Section 477A I.P.C. sentenced to undergo R.I. for five years and to pay fine of Rs.10,000/- and in default thereof, to undergo S.I. for six months, for an offence under Section 13(2) read with Section 13(1)(d) of the P.C. Act, 1988 sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.10,000/- and in default thereof, to



undergo simple imprisonment for six months with a further direction to run the sentences concurrently, **Criminal Appeal (S.J.) 1410 of 2017**, which arises out of R. C. Case No.27A of 1990, Special Case No.94 of 2011 wherein appellant, **Mangala Nand Jha** has been convicted for an offence punishable under Section 120B read with Section 420, 467, 468, 477A of I.P.C. and sentenced to undergo rigorous imprisonment for five years as well as fine of Rs.10,000/- and in default thereof, to undergo simple imprisonment for six months, under Section 420 I.P.C. sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.10,000/- and in default thereof, to undergo simple imprisonment for six months, under Section 467 I.P.C. sentenced to undergo rigorous imprisonment for five years as well as to pay fine of Rs.10,000/- and in default thereof, to undergo S.I. for six months, under Section 468 I.P.C. sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.10,000/- and in default thereof, to undergo S.I. for six months, for an offence under Section 477A I.P.C. sentenced to undergo R.I. for five years and to pay fine of Rs.10,000/- and in default thereof, to undergo S.I. for six months, under Section 13(2) read with Section 13(1)(d) of the P.C. Act, 1988 sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.10,000/- and in default thereof, to undergo simple imprisonment for six months with a further direction to run the



sentences concurrently, **Cr. Appeal (S.J.) No.1025 of 2017**, which arises out of Special Case No.5 of 2011, R. C. Case No.25A of 1993 wherein appellant, **Arvind Kumar Singh** has been sentenced for an offence punishable under Section 120B read with Section 420, 477A of I.P.C. and Section 13(1)(d) read with Section 13(2) of P.C. Act, 1988 and sentenced to undergo rigorous imprisonment for five years as well as fine of Rs.10,000/- and in default thereof, to undergo simple imprisonment for six months, under Section 420 I.P.C. sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.10,000/- and in default thereof, to undergo simple imprisonment for six months, under Section 477A I.P.C. sentenced to undergo rigorous imprisonment for five years as well as to pay fine of Rs.10,000/- and in default thereof, to undergo S.I. for six months, for an offence under Section 13(2) read with Section 13(1)(d) of the P.C. Act, 1988 sentenced to undergo R.I. for five years and to pay fine of Rs.1,72,000/- with simple interest at the rate of 6% per annum from the date of registration of the case till the date of the realization of amount of fine of Rs.1,72,000/-. All the sentences shall run currently, **Cr. Appeal (S.J.) No.1185 of 2017**, which arises out of Special Case No.71 of 2011, R. C. Case No.40A of 1988, wherein appellant, **Sakaldeep Kumar Paswan** has been convicted and sentenced for R.I. of three years and to pay fine of Rs.4,000/- and in default thereof, to



undergo S.I. for six months for an offence under Section 120B read with Section 420, 420/ 511, 471 read with Section 468 of I.P.C. as well as under Sections 5(2) r/w 5(1)(d) of the P.C. Act, 1947 corresponding to Section 13(2) r/w Section 13(1)(d) of the P. C. Act, 1988, for an offence punishable under Section 420 I.P.C. sentenced to undergo R.I. for three years and to pay fine of Rs.4,000/- and in default thereof, to undergo S.I. for six months, for an offence punishable under Section 468 I.P.C. sentenced to undergo R.I. for five years and to pay fine of Rs.5,000/- and in default thereof, to undergo S.I. for six months, for an offence punishable under Section 477A of the I.P.C. sentenced to undergo R.I. for five years and to pay fine of Rs.5,000/- and in default thereof, to undergo S.I. for six months, for an offence punishable under Section 5(1)(d) read with Section 5(2) of the P.C. Act, 1947, corresponding to Section 13(1)(d) read with Section 13(2) of the P. C. Act, 1988 sentenced to undergo five years with fine of Rs.5,000/- and in default thereof, to undergo six months S.I. All the sentences shall run currently, **Cr. Appeal (S.J.) No.1197 of 2017**, which arises out of Special Case No.39 of 2011, R.C. Case No.4 of 1990, wherein appellant, **Binay Kumar** has been convicted and sentenced for an offence punishable under Section 120B read with Section 419, 420, 467, 471 of I.P.C., for an offence under Section 120B read with 467 I.P.C. sentenced to undergo rigorous



imprisonment for five years and to pay fine of Rs.50,000/- and in default thereof, to undergo simple imprisonment for six months, under Section 120B read with Section 420 I.P.C. sentenced to undergo rigorous imprisonment for five years and a fine of Rs.25,000/- and in default thereof, to undergo S.I. for three months, for the offence under Section 120B read with Section 419 I.P.C. sentenced to undergo R.I. for two years as well as under Section 120B read with Section 471 I.P.C. to undergo R.I. for three years and to pay fine of Rs.20,000/- and in default thereof, to undergo S.I. for three months. All the sentences shall run concurrently, **Cr. Appeal (S. J.) No.1304 of 2017**, which arises out of Special Case No.39 of 2011, R.C. Case No.04 of 1990 wherein appellant, **Jai Narain Singh** has been convicted and sentenced for an offence punishable under Section 120B read with Section 419, 420, 467, 471 of I.P.C. and sentenced to undergo rigorous imprisonment for five years as well as fine of Rs.50,000/- and in default thereof, to undergo simple imprisonment for six months, under Section 120B read with 420 I.P.C. sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.25,000/- and in default thereof, to undergo simple imprisonment for three months, under Section 120B read with Section 419 I.P.C. sentenced to undergo rigorous imprisonment for two years and for the offence under Section 120B read with Section 471 I.P.C. sentenced to



undergo R.I. for three years as well as to pay fine of Rs.20,000/- and in default thereof, to undergo S.I. for three months. All the sentences shall run concurrently, **Cr. Appeal (S.J.) No.1182 of 2017**, which arises out of Special Case No.39 of 2011, R. C. Case No.4 of 1990, wherein appellant, **Dinesh Singh** has been convicted and sentenced for an offence punishable under Section 120B read with Section 419, 420, 467, 471 of I.P.C. For an offence under Section 120B r/w Section 467 I.P.C. sentenced to undergo rigorous imprisonment for five years as well as fine of Rs.50,000/- and in default thereof, to undergo simple imprisonment for six months, under Section 120B read with 420 I.P.C. sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.25,000/- and in default thereof, to undergo simple imprisonment for three months, under Section 120B read with Section 419 I.P.C. sentenced to undergo rigorous imprisonment for two years and for the offence under Section 120B read with Section 471 I.P.C. sentenced to undergo R.I. for three years as well as to pay fine of Rs.20,000/- and in default thereof, to undergo S.I. for three months. All the sentences shall run currently, **Cr. Appeal (S.J.) No.936 of 2017**, which arises out of Special Case No.46 of 2011, R.C. Case No.39(A) of 1988 wherein appellant, **Madhusudan Jha** has been convicted and sentenced for an offence punishable under Section 120B read with Section 420, 467, 468, 471, r/w 467 and 477A of



I.P.C. and sentenced to undergo rigorous imprisonment for five years as well as to pay fine of Rs.10,000/- and in default thereof, to undergo simple imprisonment for six months under each of the provisions, under Section 5(2) r/w 5(1)(d) of P.C. Act, 1947, corresponding to Section 13(2) r/w Section 13(1)(d) of the P.C. Act, 1988 and sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.60,700/- along with simple interest of 6% per annum from the date of registration of this case with a further direction to run the sentences concurrently, have already been admitted.

3. Appellant of respective appeal being under custody have moved their prayer for bail after suspending the sentence till pendency of these appeals in terms of Section 389(1) of the Cr.P.C.

4. Heard learned counsel for the appellants as well as learned counsel representing the C.B.I.

5. Learned counsels for the appellants have submitted that appellants were on bail during the trial. On account of callous attitude of the C.B.I., the prosecuting agency, proceeding remained pending for years together. Furthermore, it has also been submitted that the nature of evidences having been adduced on behalf of prosecuting agency, did not justify recording of the conviction and sentence and in the aforesaid background, there happens to be every likelihood of these appeals being allowed. Further submitted that



since after the judgment, respective appellants are under custody as such, appellants be allowed bail.

6. The learned counsel representing the C.B.I. opposed the prayer and submitted that prayer of appellants are not at all tenable in the eye of law. Furthermore, it has been submitted that consideration of bail in terms of Section 389(1) Cr.P.C. lies on different, independent footing, more particularly, when it relates with P.C. Act. Furthermore, it has been submitted that each of the appellant has been found deeply involved in an unscrupulous activities, whereunder they managed to siphon huge amount costing government exchequer by preparing forged and fabricated bills, hence their prayer is fit to be rejected.

7. Though, there happens to be clear distinction in between application of regular bail falling under Chapter-XXXIII of Cr.P.C. as well as provision of appeal falling under Chapter-XXIX of the Cr.P.C. The first part deals with pre-conviction stage while later part post-conviction stage. While considering the prayer under pre-conviction stage, the basic principle of criminal jurisprudence that accused should be treated innocent till recording of guilt always happens to be available in favour of accused while the same is found placed apart once finding of guilt comes out and so, the principles so governing with regard to pre-conviction bail did not survive relating



to post conviction bail. That being so, application of Section 389(1) of the Cr.P.C. is found constrained by judicial limitations and in routine manner, granting of bail has been deprecated. However, during consideration of the same, apart from other factors to be taken into consideration, including criminal antecedent, nature of offences as well as evidences having against the appellant during trial is also to be seen.

8. There happens to be divergence of opinion how to handle the situation when faced by the appellate court over grant of bail in terms of Section 389(1) of the Cr.P.C. and during consideration of the same, it is evident that the Apex Court has treated convict under P.C. Act constringed and so, different approach has been prescribed. In *S. Venkatesh vs. State of Karnataka reported in (2007) 15 SCC 579* wherein appellant was convicted and sentenced R.I. for two years and to pay fine of Rs.2,000/- with regard to offences punishable under Section 7, 13(1) (d) read with Section 13(2) of the P.C. Act was allowed considering the quantum of sentence as well as having no prospect of hearing of appeal in near future:-

“2. The appellant was convicted under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and awarded maximum sentence of two years’ rigorous imprisonment and to pay fine of Rs.2000. The appeal filed by him was admitted by the High Court but his bail



application was rejected vide order impugned in this appeal.

3. Keeping in view the facts and circumstances of the case, that there is no likelihood of the appeal being heard in the near future and the factum that the sentence awarded is only two years, we feel that the High Court is not justified in refusing the bail application.”

9. In ***Shiv Kumar vs. State of NCT of Delhi*** reported in (2008) 17 SCC 122, the Apex Court had occasioned to see earlier relevant pronouncements and after discussing the same, it has been held:-

“7. This Court has observed in several cases that where the accused is convicted for offence punishable under the Act, it would not be prudent and desirable to give protection under Section 389 of “the Code”. However, taking into account the peculiar circumstances of the case we request the High Court to dispose of the appeal as early as practicable.”

10. In ***Dinesh Kumar Sinha vs. State of Jharkhand through C.B.I.*** reported in 2009 CRI.L.J. 2994, wherein appellant was sentenced for a period of four years under Section 409, 420, 467, 468, 471, 465, 471 read with Section 120B I.P.C. and along with Section 13(2) read with Section 13(1)(c)(d) of the P.C. Act, appellant was granted bail by the Apex Court on account that appellant remained



under custody for two years and there was no possibility of early hearing of appeal in the High Court. The relevant Paragraph is quoted below:-

“6. Since the appellant has undergone almost two years of imprisonment as awarded by the trial Court and also taking into account the fact that the appeal may not heard in the near future, we are of the opinion that in the peculiar facts and circumstances of this case, the applicant/appellant should be released on bail. Accordingly, we grant interim bail to the appellant, subject to the appellant furnishing the bail bond as well as surety to the satisfaction of the Special Judge, CBI, Ranchi.”

11. In ***Jayalalithaa vs. State of Tamil Nadu reported in (2015) 3 SCC 111***, appellant Jayalalithaa was granted bail on account of remaining under custody for sufficient time.

“1. After hearing Shri Fali S. Nariman, Shri K.T.S. Tulsi, learned Senior Counsel for the petitioners and Shri Subramaniam Swamy, party-in-person and also the complainant, for the present, we suspend the sentence and direct that the petitioners, (i) Selvi J. Jayalalithaa, (ii) Tmt. N. Sasikala, (iii) Mr. V. N. Sudhakaran, and (iv) Tmt. J. Elasvarasi be released on bail on executing a bond with two solvent sureties by each of them to the satisfaction of the Thirty-sixth Additional City Civil and Sessions Judge (Special Court for trial of criminal cases against Km



Jayalalithaa and others) at Bangalore.”

12. In ***I.B.S. Uppal vs. C.B.I. reported in (2015) 12 SCC 449***, wherein appellant was convicted and sentenced for different Sections extending R.I. for four years and further, directing the sentence to run concurrently. During consideration of grant of bail, again the period of detention has been identified as, relevant factor along with feasibility of earlier hearing of an appeal, while allowing the prayer for bail.

“4. The learned counsel for the appellant submitted that out of four years the appellant is already in custody for about one year and seven months. There is no likelihood of hearing of the appeal in near future.

6. We have heard the learned counsel for the parties and perused the record. Taking into consideration the facts of the case, we direct that during the pendency of the appeal before the High Court, sentence passed in Corruption Case No.21/01 [RC No.1(A)/98/CBI/ACUI/ND] shall remain suspended insofar as it relates to appellant I.B.S. Uppal and he is enlarged on bail subject to furnishing bail bonds for the sum of Rs.50,000 (Rupees fifty thousand only with two solvent sureties for the like amount to the satisfaction of the trial court.”

13. So, from the aforesaid judicial pronouncement, it is apparent that Apex Court not only considered the absence of



feasibility of hearing of appeal in near future rather the period of judicial custody at least for more than a year. So far present appeals are concerned, the appellants have not crossed such barrier. This Bench has been assigned hearing of the Criminal Appeal since 2015, which is going on. As such, prayer for bail of all the appellants are hereby rejected giving the liberty perceived from the above quoted citations.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	25.07.2017
Uploading Date	18.08.2017
Transmission Date	18.08.2017

