

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1801 of 2019

Arising Out of PS. Case No.-49 Year-2002 Thana- MAKHDUMPUR District- Jehanabad

1. Vinay Mahto, Son of Late Rajballabh, Resident of Village - Saidpur, P.S.- Makhdumpur, Distt - Jehanabad.
2. Anand Mahto @ Anand Kumar Mahto, Son of Brhamdev, Resident of Village - Saidpur, P.S.- Makhdumpur, Distt - Jehanabad.
3. Suchit Mahto @ Sujeet Mahto, Son of Brhamdev, Resident of Village - Saidpur, P.S.- Makhdumpur, Distt - Jehanabad.
4. Siya Ram Mahto, Son of Paras Mahto, Resident of Village - Saidpur, P.S.- Makhdumpur, Distt - Jehanabad.
5. Devanand Mahto @ Devanand Prasad, Son of Ram Das, Resident of Village - Saidpur, P.S.- Makhdumpur, Distt - Jehanabad.
6. Raj Ballabh Mahto, Son of Ram Das, Resident of Village - Saidpur, P.S.- Makhdumpur, Distt - Jehanabad.
7. Anuj Mahto, Son of Paras Mahto, Resident of Village - Saidpur, P.S.- Makhdumpur, Distt - Jehanabad.
8. Shailendra Mahto @ Salendra Mahto, Son of Siyaram Mahto, Resident of Village - Saidpur, P.S.- Makhdumpur, Distt - Jehanabad.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rakesh Kumar, Adv.
For the Respondent/s : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 05-11-2019

Heard learned counsel for the appellants as well as
learned Additional Public Prosecutor.

2. On query, learned counsel for the appellants has
submitted that he has already informed the appellants to surrender.
All the appellants are scattered in order to earn their livelihood.



They are likely to arrive but, up till now, they have not surrendered.

3. Whenever an appeal comes for admission, the status of the appellant is found to be properly cared in accordance with Chapter XII under rule 8 of the Patna High Court Rules which speaks as follows:

“CHAPTER- XII: Procedure in Criminal Cases:

... ..
... ..

(8) ¹[No appeal against conviction application or motion shall be heard for admission unless the accused has surrendered to the order of the court below convicting him to a sentence of imprisonment for a term and an intimation to this effect has been filed except in case where the appellant has been released on bail by the trial court].”

4. From the record it is evident that the appellants have been found guilty for an offence punishable under Section 148/149 of the IPC and sentenced to undergo R.I. for two years as well as to pay fine appertaining to Rs.500/-, under Section 323/149 of the IPC and sentenced to undergo S.I. for one year as well as to pay fine appertaining to Rs.500/- and in default thereof to undergo R.I. for one month, additionally under both counts with a direction that the period having undergone during course of trial be set off with a further direction that sentences shall run concurrently vide judgment of conviction dated 08.03.2019 and the order of sentence



dated 11.03.2019 passed by the learned 5th Additional Sessions Judge, Jehanabad in Sessions Trial No.283 of 2003/10 of 2018.

5. It is further evident that on 11.03.2019 itself a prayer has been made on behalf of the appellants in accordance with Section 389(3) of the Cr.P.C. and, from the aforesaid order it is evident that the learned lower court has directed that before 11th of June, 2019 the accused are directed to have an order from the High Court on a revision filed on their behalf but, there was no order that convicts are released on provisional bail for specified period as laid down under Section 389(3) of the Cr.P.C.. Whereupon, learned counsel for the appellants was requested to have an order in accordance with Section 389(3) of the Cr.P.C. in its true spirit so that it could be adjudicated upon under sub-section (1) of Section 389 of the Cr.P.C. being an appellate court.

6. Furthermore, it is evident that vide order dated 30.04.2019 the appellants as well as the learned lower court were enlighten with regard to mandate of an order in terms of Section 389(3) of the Cr.P.C. The subsequent order dated 13.05.2019 has been filed from perusal of which, it is evident that only in place of 'revision', the same has been corrected as 'appeal' but again, the differences so persisting since before allowed to continue. That means to say grant of provisional bail that too for specified period



has not been specified as mandated under Section 389(3) of the Cr.P.C.

7. Times without number learned counsel for the appellants has been requested that vide order dated 30.04.2019 there happens to be specific direction to have an order in accordance with Section 389(3) of the Cr.P.C. and so, there should be proper prayer at the end of the appellants before the learned lower court in terms thereof and in likewise manner there should be an order at the end of the learned lower court but in vain. Consequent thereupon, this memo of appeal suffers from inherent defect and is accordingly rejected.

8. Side by side the learned lower court is show caused to explain why not an order in accordance with Section 389(3) of the Cr.P.C. has been passed, even on 11.03.2019, in spite of direction given by this Court under order dated 30.04.2019?

9. Office to serve and procure the desired show cause and list on 27.11.2019.

(Aditya Kumar Trivedi, J)

skpathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.11.2019
Transmission Date	13.11.2019

