

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22229 of 2020

Arising Out of PS. Case No.-30 Year-2020 Thana- ITARHI District- Buxar

ABHISHEK KUMAR @ DINKAL Son of Bipin Singh @ Bipin Chaudhary
Resident of Village- Harpur, P.S.- Itarhi in the District of Buxar. At present
resident of Village- Itarhi, P.S.- Itarhi in the District of Buxar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sunil Kumar

For the Opposite Party/s : Mr.Shyam Kumar Singh

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

4 15-10-2020 Heard learned counsel for the parties.

This application for regular bail arises out of Itarhi P.S.
Case No. 30 of 2020, disclosing the offence punishable under
Section 392 of the Indian Penal Code.

It is the case of the prosecution based on *fardbeyan* of
the informant recorded by a police officer that at 5.40 p.m. on
the alleged date of occurrence, when he was returning to his
house from his shop, three motorcycle borne criminals waylaid
him and snatched from him a cash of Rs. 25,000/-, his cell
phone, ATM card etc. at the point of pistol. The FIR was
registered against unknown. The petitioner's name surfaced in
connection with Buxar Town P.S. Case No. 93 of 2019, which
too has been registered under Section 392 of the IPC on the



basis of confessional statement of a co-accused of that case. On the basis of the aforesaid confessional statement, the petitioner was remanded in the present case also.

Case diary was called for, soft copy of which is there on record. I have perused the case diary and have considered the submissions made on behalf of the petitioner and learned Additional Public Prosecutor for the State of Bihar.

Learned counsel for the petitioner has submitted that confessional statement before the police is the only material available against the petitioner which has no evidentiary value and, therefore, the petitioner deserves his release on regular bail. He has further submitted that an offence punishable under Section 392 of the IPC is triable by a Magistrate of the First Class. He has submitted with reference to Section 29(2) of the Cr.P.C. that court of a Magistrate of the 1st Class can pass a sentence of imprisonment for a term not exceeding three years and since the petitioner has remained in custody for six months, he deserves to be released on bail.

Both the above noted submissions are not acceptable to this Court. It is evident from paragraph-40 of the case diary that the petitioner's name had surfaced during course of investigation of Buxar Town P.S. Case No. 93 of 2020 on the



basis of confessional statement of a co-accused, whereafter the petitioner was apprehended. It is evident that the petitioner confessed his involvement in commission of the offence which is subject-matter of the present case and his confessional statement led to recovery of the motorcycle used in commission of the offence and the mobile phone which was snatched in the occurrence. In such view of the matter, since the confessional statement of a co-accused and the petitioner led to recovery of incriminating materials, the first submission made on behalf of the petitioner is hereby rejected.

Coming now to the second submission on the question of imposition of punishment of more than three years/ seven years in Magistrate triable cases, in my view, the answer lies in Section 325 of the Cr.P.C.

Be it noted that punishment for robbery as provided under Section 392 of the IPC is rigorous imprisonment for a term which may extend to 10 years and if the robbery is committed on the highway between sunset and sunrise, the imprisonment may be extended to 14 years. The first schedule of the Cr.P.C. contains classification of offences, on close examination of which it is true that an offence punishable under Section 392 of the Indian Penal Code is triable by a Magistrate



of 1st Class. Section 29 of the Cr.P.C. reads thus:-

“29. Sentences which Magistrates may pass.

1. The Court of a Chief Judicial Magistrate may pass any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.

2. The Court of a Magistrate of the first Class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five thousand rupees, or of both.

3. The Court of a Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding one thousand rupees, or of both.

4. The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first Class.”

It is easily evincible on reading of the provision under Section 29 of the Cr.P.C. that court of a Chief Judicial Magistrate, which is also a court of Magistrate of the First Class, may pass any sentence authorized by law except “a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years”. Sub-section (2) of Section 29 empowers the court of a Magistrate of the 1st Class to pass a sentence of imprisonment for a term not exceeding three years. Let there be no room for doubt that the court of a Chief Judicial Magistrate is also a Magistrate of the 1st Class which can impose



sentence of imprisonment for a term up to seven years.

Can a plea be taken that though the punishment for an offence prescribed under a Penal Code is more than three year, no punishment for a term of more than three years can be imposed because the offence is triable by a Magistrate?

Section 325 of the Cr.P.C. deals directly with this aspect. It provides that whenever a Magistrate is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment 'different in kind from, or more severe than, that which such Magistrate is empowered to inflict', or, he may record the opinion and submit his proceeding, and forward the accused, to the Judicial Magistrate to whom he is subordinate.

Sub-section (3) of Section 325 empowers the Chief Judicial Magistrate, to whom the proceedings are submitted may, if he thinks fit, to examine the parties and recall and examine any witness who has already given evidence in the case and he may call for and take any further evidence and shall pass 'such judgment, sentence or order' in the case as he thinks fit, and as is according to law.

I am conscious of the legal position that if a trial relates to an offence punishable under Section 392 of the I.P.C., with no



other offence triable by a Court of Sessions, no punishment of sentence of imprisonment for a term of more than seven years can be imposed. This position clearly emerges on examination of Sections 29 and 30 read with Section 325 of the Cr.P.C. Undoubtedly, if the trial in relation to an offence punishable under Section 392 of the I.P.C., with any other offence(s) triable by a Court of Sessions, punishment of imprisonment for a term up to ten years or even fourteen years can be imposed by the Court of Sessions.

In view of the discussions aforesaid, the submission that the petitioner has remained in custody for six months cannot be a ground for his release on bail for the present, in the background of his criminal antecedent and incriminating material collected during course of investigation.

This application is accordingly dismissed. The petitioner shall be at liberty to renew his prayer for bail after six months, if there is no substantial progress in the trial, in the meanwhile.

(Chakradhari Sharan Singh, J)

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