

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3964 of 2019

Arising Out of PS. Case No.-4 Year-2009 Thana- SIKTA District- West Champaran

SHATRUGHAN KUNWAR Son of Late Rambalak Kunwar @ Rambalak
Kuar R/o Village/ Town- Shikarpur, P.S.- Sikta, District- West Champaran

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Ms. Aprajita, Advocate
For the Respondent/s : Mr. Binay Krishna, SPP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

4 18-02-2020 Heard learned counsel for the parties.

This is an appeal under Section 14(A)(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the refusal of prayer for anticipatory bail vide order dated 19.06.2019 passed by the learned 1st Additional Sessions Judge-cum-Special Judge (S.C./S.T./POCSO Act), West Champaran, in connection with Sikta Police Station Case No.4 of 2009, registered under Sections 341/323/448/504/34 of the Indian Penal Code and Sections 3(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

There is accusation in the FIR against the appellant and two others of commission of abuse and assault to a member of the scheduled caste.



Submission is that after investigation of the case the appellant was not sent up for trial; rather two others were sent up for trial. Consistent with police report the Court-below took cognizance against others and not against the appellant. After trial judgment was delivered on 27.03.2019 whereby other two co-accused were convicted and in the last paragraph the trial Court observed that before parting with the judgment it would like to summon this appellant for trial because sufficient prosecution evidence was there against the appellant also.

Learned counsel for the appellant while seeking for anticipatory bail for the appellant submits that the summoning order is itself illegal one for the reason that stage of Section 319 Cr.P.C. has already crossed after judgment was pronounced and conviction and sentence was recorded against the accused who were facing the trial.

Section 319(1) Cr.P.C. reads as follows:

“Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.



Sub-section (4) provides that where the Court proceeds against any person under Sub-section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

Without going into the merit of the claim of illegality of the summoning order in view of the mandate of sub-section (1) of Section 319 Cr.P.C., quoted above, in my view, for substantial justice the appellant deserves anticipatory bail.

Hence, let the appellant, above named, in the event of his arrest or surrender before the Court below within a period of thirty days from the date of receipt of the order, be released on bail on furnishing bail bonds of Rs.20,000/- (Twenty Thousand) with two sureties of the like amount each to the satisfaction of the learned Court-below where the case is pending in connection with the aforesaid case, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure as well as condition that the appellant shall fully cooperate with the investigation/trial of the case, failing



which the court below shall be at liberty to cancel the bail bond of the appellant.

The appellant shall not leave the country without permission of the trial Court.

Accordingly, the impugned order is set aside and the appeal is allowed.

(Birendra Kumar, J)

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