

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32641 of 2021

Arising Out of PS. Case No.-156 Year-2003 Thana- SURYAGARHA District- Lakhisarai

BINOD KUMAR HIMANSHU @ BINOD YADAV S/O CHANDRADEO
YADAV R/o village- Chananiya, P.S.- Surajgarha, District- Lakhisarai

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Vikram Deo Singh, Adv.

Mr. Shankar Kumar, Adv.

For the Opposite Party/s : Mr. Sanjay Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

5 05-04-2022 Heard Mr. Vikram Deo Singh, learned counsel for
the petitioner and Mr. Sanjay Kumar Pandey, learned Additional
Public Prosecutor for the State.

Petitioner seeks regular bail in connection with
Surajgarha PS Case No. 156/2003 registered for the offence
punishable under Sections 302/34 of the IPC and Section 27 of
the Arms Act.

Learned counsel for the petitioner submits that the
petitioner was granted bail on 24.11.2004 *vide* Cr. Misc. No.
34776/2004. Learned counsel next submits that altogether there
were seven accused persons in the trial and out of seven, six
accused persons have been convicted. However, on the date of
judgment on 29.07.2017, the petitioner absconded. Therefore,



no conviction order was passed by the learned trial court against the petitioner while other six accused persons were convicted and some of them have preferred appeal before this Court which is pending *vide* Cr. Appeal (DB) No. 977/2017 and the lower court records in that case was called for, by this Court which is still available before this Court. Learned counsel further submits that the petitioner was arrested on 31.10.2020 and since then he is in custody.

Since the petitioner absconded on the date of judgment itself, I am not inclined to grant regular bail to the petitioner at this stage. The same is, hereby, rejected.

However, this Court *vide* its order dated 29.03.2022 had called for a report from the Supreme Court Department of this Court regarding policy decision with respect to retention of the lower court records in original in cases where the trials have not finally been terminated and disposed and in pursuance thereof, the said Supreme Court Department has furnished a report and from perusal of the same, it appears that a policy decision in this regard has been taken by the Standing Committee of this Court on 08th of January 2019 and has passed resolution which is as follows:-

“The order of the Apex Court was perused and the Committee is of the opinion that the clear



intention of the directions is to ensure that the lower court records are to be summoned and retained in original only in cases where trials have been finally terminated and stand disposed of. There are many cases in which either the trial is still pending or there are split trials and therefore in such cases the lower court records should remain with the lower court with a photo stat copy being sent to the High Court for its perusal. However, in any such extreme case where the lower court records, in original, are essential for perusal, the same may be summoned but it should be sent back immediately after perusal and should not be retained in the High Court so as to cause any impediment in disposal of the case pending in the lower court”.

In view of the resolution of the Standing Committee and the fact that the trial of the petitioner is still pending inconclusive, accordingly, I direct the office to send back the original lower court records to the court concerned immediately and a photo stat copy of entire records/LCR shall be kept by the office for the purpose of deciding appeals.

It is made clear that after receipt of the lower court records in original, the learned trial court will conclude the trial as early as possible.

(Anil Kumar Sinha, J)

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