

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.798 of 2022

Arising Out of PS. Case No.-278 Year-2019 Thana- BEGUSARAI COMPLAINT CASE
District- Begusarai

Sanjeev Kumar Agarwal @ Sanjiv Kumar Agarwal Son Of Late Arbind Kumar Agarwal R/O Mohalla- Mungeriganj, Arbind Shobha Memorial Dental Hospital, Kharag Narayan Road, Mungeriganj, P.S.- Town, District- Begusarai

... .. Petitioner

Versus

1. The State Of Bihar
2. Prakash Kumar Agarwal Son Of Late Sukhdeo Narayan Agarwal R/O Mohalla- Main Road P.N. Bazar And Jewellers, Mungeriganj, P.S.- Town, District- Begusarai

... .. Respondents

Appearance :

For the Petitioner/s	:	Ms. Shashi Priya Pathak, Advocate Mr. Ambrish Kumar Jha, Advocate
For the Respondent/s	:	Mr. Aditya Narayan Singh. I, APP
For the O.P. No.	:	Mr. Sanjay Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

- 3 21-12-2022 Heard learned counsel for the petitioner, learned counsel for the opposite party no. 2 and learned counsel for the State.

Petitioner, in the present case, is aggrieved by and dissatisfied with the order dated 21.09.2022 passed in Cr. Appeal No. 25/2022 by which the learned Additional Sessions Judge – 1st, Begusarai has been pleased to dismiss the petition filed by the petitioner under Section 389 Cr.P.C. on the ground that it is not maintainable and the prayer of the petitioner to confirm the provisional bail granted by the learned A.C.J.M. -



4th, Begusarai vide order dated 29.04.2022 has been refused.

Learned counsel for the petitioner submits that while convicting the petitioner for an offence under Section 138 N.I. Act, the learned A.C.J.M. - 4th, Begusarai directed him to pay the amount under the cheque with 6% simple interest thereof and to undergo one month of simple imprisonment. By the same order, the petitioner was granted provisional bail for a period of one month to enable him to file a criminal appeal.

Learned counsel submits that the petitioner preferred the criminal appeal within time, but thereafter the case was transferred to another court and the delay took place in transferring of the records etc.

Learned counsel submits that the learned appellate court has rejected the prayer of the petitioner only because the petitioner could not produce the certified copy of the order dated 04.06.2022. It is submitted that in all fairness the appellate court was in possession of the Lower Court Records and would have gone through the L.C.R. to find out the correct position but that was not done.

Learned counsel for the opposite party no. 2 has opposed this application, as according to him, the petition was rightly rejected because the petitioner had failed to produce the



provisional bail order. Learned counsel however does not dispute that the petitioner was granted provisional bail vide order dated 04.06.2022 passed by learned A.C.J.M. - 4th, Begusarai.

Learned counsel for the State has also endorsed the submission of learned counsel for the opposite party no. 2.

Having heard learned counsel for the parties and on perusal of the records, this Court is of the considered opinion that the learned Additional Sessions Judge - 1st Court, Begusarai has committed a grave error in rejecting the petition under Section 389 Cr.P.C. on the solitary ground that the certified copy of the provisional bail order was not produced before the court.

To this Court, it appears that the liberty of the petitioner was more important and it should have been considered keeping in view the law and the materials available on the record. This Court agrees with the submission of learned counsel for the petitioner that the learned appellate court should have in all fairness gone through the L.C.R. and taken a correct view of the matter.

In the aforesaid facts and circumstances, the impugned order dated 21.09.2022 passed in Cr. Appeal No. 25/2022 by learned Additional Sessions Judge – 1st, Begusarai is



hereby set-aside.

The learned Additional Sessions Judge – 1st, Begusarai is directed to consider the application under Section 389 Cr.P.C. filed on behalf of the petitioner afresh without being prejudiced by the earlier order.

Till consideration of the application under Section 389 Cr.P.C., no coercive action shall be taken against the petitioner.

This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

U		T	
---	--	---	--

