

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.67735 of 2019**

**In
CRIMINAL MISCELLANEOUS No.27005 of 2018**

Arising Out of PS. Case No.-149 Year-2016 Thana- NAUGACHIA District- Bhagalpur

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THE STATE OF BIHAR THROUGH SUPERINTENDENT OF POLICE
NAUGACHIA

... .. Petitioner/s

Versus

AJIT YADAV @ SANJAY KUMAR YADAV @ AJIT KUMAR S/o Late
Naresh Yadav R/o Village- Rasalpur, P.S.- Naugachia, District- Bhagalpur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prabhu Narayan Sharma, AC to AG

For the Opposite Party/s : Mr. Vivekanand Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

14 12-05-2022

Heard the learned counsel for the parties.

The instant application has been filed praying for modification of part of the order dated 15.5.2019 passed in Cr. Misc. no. 27005 of 2018 whereby and whereunder this Court was pleased to enlarge the petitioner Ajit Yadav, an accused in Naugachia P.S. Case no. 149 of 2016 on bail.

The petitioner is aggrieved by part of the order dated 15.5.2019 which is quoted herein below:

“Even the Superintendent of Police, Naugachia did not show any interest and this fact itself shows that the prosecution is not at all interested in speedy trial of the case.

Let this order be sent to the Director



General of Police, Bihar and the Principal Secretary, Home for information and needful that such officer, who is unable to procure the attendance of the prosecution witnesses in court for speedy trial of the case, should not be posted in the district.”

It is submitted by learned counsel appearing for the petitioner that the petitioner joined as Superintendent of Police, District Naugachia on 9.4.2018. She took steps to comply with all the directions of this Court as also the learned trial court for speedy disposal of the case. The facts of the case and the steps taken have been narrated in detail in the main petition itself which is being quoted herein below for ready reference:

“ 6. That it is humbly submitted that the aforesaid accused of Naugachia P.S. Case No. 149/2016 was apprehended and sent to judicial custody on 23.11.2016 and supplementary charge-sheet no. 16/2017 dated 18.02.2017 was submitted for the offences under Sections 147/148/149/302 and 120B IPC and Section 27 Arms Act against accused Ajit Kumar Yadav.

7. That it is further submitted that in connection of Naugachia P.S. Case No. 149/2016, first charge-sheet was filed vide charge-sheet no. 214/2016 dated 21.11.2016 against six accused persons who were tried and convicted in Sessions Trial No.



05/2017. The case of the accused Ajit Kumar Yadav was committed to the learned Court of Sessions and he was initially facing trial in Sessions Trial No. 306/2017.

Photo copies of charge-sheet no. 214/2016 and 16/2017 are annexed herewith and marked as Annexure-3 series to this petition.

8. That it is further submitted that the order sheet dated 17.04.2017 of Sessions Trial No. 306/2017 shows that the order dated 22.03.2017 passed in Criminal Miscellaneous No. 12405/2017 by the Hon'ble High Court was received in the Court. Learned Additional Sessions Judge 2nd Naugachia prior to 17.04.2017. The order sheet dated 04.05.2017 reflects that the accused Ajit Kumar Yadav was produced from the prison and the Learned Court was pleased to adjourn and fixed the case for framing of charge on 20.05.2017. On 20.05.2017 charges against the accused Ajit Kumar Yadav were framed and the Learned Court fixed the case on 07.06.2017 for prosecution evidence.

Photo copies of order dated 17.04.2017, 04.05.2017 and



20.05.2017 of Sessions Trial No. 306/2017 are annexed herewith and marked as Annexure-4 series to this petition.

9. That it is further submitted that pursuant to order dated 31.07.2017 passed in ST No. 543/2017, it was amalgamated with ST No.306/2017, in which the accused Ajit Kumar Yadav is facing trial. In this case summons to the prosecution witnesses were first time issued vide DR No. 305 dated 02.08.2017.

10. That it is further submitted that on 16.08.2017 one PW namely Sunita Devi was produced before the court for examination. PW Sunita Devi was examined and partly cross examined on 16.08.2017. On 17.08.2017 the cross examination of PW Sunita Devi was completed and she was discharged.

11. That it is further submitted that on 09.10.2017 on PW namely Jai Krishan Yadav was produced before the Court, but he could not be examined and the case was adjourned to 11.10.2017. On 11.10.2017 PW Jai Krishan Yadav was produced. His examination-in-chief was completed but on the request of Learned Defence Advocate the case was adjourned to 12.10.2017. On 12.10.2017, after



completion of cross examination, PW Jai Krishan Yadav was discharged. The Learned Court fixed the date on 03.11.2017.

It is further submitted that on 03.11.2017 one witness namely Papu Yadav @ Prabhat Kumar was produced before the Learned Court, but he could not be examined as the accused Purusotam @ Chhotu and Rahul Yadav were sent to Sessions Court, Bhagalpur. The case was fixed on 25.11.2017 for production of the accused.

A photo copy of order dated 03.11.2017 is annexed herewith and marked as Annexure-5 to t his petition.

12. On 25.11.2017 and 22.12.2017 PW could not be produced before the Learned Court. On the next very date 29.01.2018, one accused Rahul Yaav did not appear in the Court hence the Learned Court fixed the next date 08.03.2018. On 08.03.2018 although four accused persons were present the Learned Court posted the case on 27.04.2018. On 27.04.2018 next date fixed was 11.06.2018.

13. That it is further submitted that the case was transferred from the Court of Learned ADJ 1st,



Naugachia to the Court of Learned ADJ 2nd , Naugachia vide order memo no. 2984-2986 dated 01.06.2018 of the Learned District and Sessions Judge, Bhagalpur and the date was fixed on 23.06.2018 for hearing.

14. That it is further submitted that on 23.06.2018 out of four accused two accused were absent, so the next date was fixed on 26.07.2018. Thereafter, the case was posted on 24.08.2018 for evidence. In the mean time the case record was transferred to the Court of Learned Additional District Judge 3rd, Naugachia vide order Memo no. 3938-40 dated 21.08.2018.

15. That it is further submitted that on 24.08.2018, the Presiding Officer was on leave and the case was posted on 14.09.2018. On 14.09.2018, the prosecution has produced one witness before the Court. This witness could not be examined due to absence of two accused persons namely Baleshwar Singh @ Balo and Rahul Yadav. The bail bond of the above persons were cancelled and the case record were fixed for appearance of the accused.

16. That is further submitted that on subsequent date i.e. 27.09.2018 one accused namely



Balkeshwar Singh @ Balo Singh appear and got fresh date but accused Rahul Yadav remained absent from 14.09.2018 to till date. It means the case record was not fixed for evidence from 14.09.2018 rather the case was remain pending for appearance of the accused.

17. That is is further submitted that on prayer of the prosecution, proclamation under Section 82 Cr.P.C. was issued against accused Rahul Yadav on 29.03.2019. The prosecution also filed petition for issuance of order for attachment of properties under Section 83 of Cr.P.C. Order under Section 83 issued on 22.05.2019 against accused Rahul Yadav was duly executed and execution report has been submitted in the Court.

18. That it is humbly submitted that the action taken by the petitioner after her joining as S.P, Naugachia clearly established that non-conclusion of the trial of Sessions Trial No. 306 of 2017/543/2017 is not due to any in-action on the part of the petitioner rather it was due to some reasons over which the petitioner has no control.”

Learned counsel appearing for the State / petitioner submits that from the explanation furnished in the petition and quoted hereinabove, it would be evident that the Superintendent



of Police concerned took all steps ever since she was posted at Nughachia. Thus, it is prayed that the observations made with respect to her in the aforesaid order dated 15.5.2019 be expunged / recalled.

Learned counsel appearing for the sole opposite party has no objection to the aforesaid prayer of the petitioner.

Having heard learned counsel for the parties and taking into consideration the facts of the case specially the explanation furnished on behalf of the petitioner given in detail in paragraph nos. 6 to 18 of the petition and which is quoted hereinabove, the Court is satisfied that the petitioner has made out a case for modification of the aforesaid order.

In the facts of the case, the application is allowed and part of the order dated 15.5.2019 quoted hereinabove (on page nos. 1-2 of this order) and which refers to the Superintendent of Police, Naugachia not showing any interest, the prosecution not being interested in the speedy trial of the case and for communication of the order to the Director General of Police, Bihar and the Principal Secretary, Home, is hereby recalled and the same shall not be read as part of the order dated 15.5.2019 passed in Cr. Misc. no. 27005 of 2018 (Ajit Yadav vs The State of Bihar).



The application stands allowed to the above extent.

(Partha Sarthy, J)

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