

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.5153 of 2023

Arising Out of PS. Case No.-305 Year-2020 Thana- DANAPUR District- Patna

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Poonam Sao @ Punam Sao, S/o Late Rama Sao @ Rama Kant Sao, Resident
of Village- Biwiganj, Maida Toli, P.S.- Danapur, District- Patna

... .. Appellant

Versus

1. The State of Bihar
2. Shailesh Kumar, Son of Late Dasai Chaudhary, R/o Village- Biwiganj,
Dalwar Road, Near City Point, P.S. Danapur, District- Patna

... .. Respondents

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Appearance :

For the Appellant	:	Mr. Ravindra Kumar, Advocate Mr. Madhukar Anand, Advocate
For the State	:	Ms. Usha Kumari 1, Special PP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

10 27-09-2024 Heard learned counsel for the appellant and learned
Special Public Prosecutor for the State.

2. The notice has been validly served on the substituted private Respondent No. 2, however, nobody has entered appearance on behalf of the Respondent No. 2.

3. The appellant in this case is seeking setting aside of the order dated 22.03.2022 passed by learned Special Judge (SC/ST Act), Patna in Special Case No. 280 of 2020 by which his prayer for bail in Danapur P.S. Case No. 305 of 2020 for the offences punishable under Sections 341, 323, 325, 307, 504, 506, 34 of the Indian Penal Code, Section 27 of the Arms Act and Section 3(i)(r) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act has been refused. He has three

criminal antecedents. He is in custody since 21.05.2020.

4. Learned counsel for the appellant has informed this Court that the appellant is on bail in all the three cases which are stated in paragraph '3' of the memorandum of appeal.

5. Earlier, the appellant had moved this Court for grant of bail by setting aside the order dated 04.01.2021 in Criminal Appeal (SJ) No. 1263 of 2021. This Court vide order dated 12.03.2021 having regard to the facts and circumstances of the case and there being an allegation against the appellant of causing a firearm injury to the informant refused to grant bail but at the same time directed the learned trial court to expedite the trial and it was expected that the court shall proceed with the trial as expeditiously as possible. The prosecution was directed to co-operate in course of trial of the case. The order dated 12.03.2021 passed in Criminal Appeal (SJ) No. 1263 of 2021 by this Court is available on the record.

6. As per the prosecution story, on 19.05.2020 at about 07:00 PM in the evening, when the informant was at his mobile shop situated at Dalwar Road near City Point, one Poonam Sao (appellant) along with his friend, namely, Santosh came there and told him that his son had not recharged his mobile phone and alleged that he used to offer 'tari' to young

children. When the informant objected and denied the allegations made by this appellant, the appellant indulged in arguing with the informant. After some time, this appellant took out his pistol from his waist and fired which hit the stomach of the informant. The informant tied one towel ('gamcha') around his stomach and asked the nearby people who had gathered there to take him to the hospital. In the meanwhile, the local boys and the son of the informant came there and took the informant to the hospital.

7. Learned counsel for the appellant submits that even as in this case, charge has been framed against the appellant on 19.03.2021, as per the report of the learned trial court vide Letter No. 263 dated First day of August, 2024, only one witness who was the informant's son has been examined. Now, he has instruction to say that one more witness has been examined. The informant of this case has died on 31.01.2022 and he could not be examined in course of trial. It is submitted that considering that the trial is not proceeding with appropriate pace and the appellant has already remained in incarceration since 21.05.2020, at this stage, he would deserve privilege of bail, subject to such conditions which this Court may impose to secure his presence in course of trial.

8. Learned Special PP for the State submits that it is true that the trial has not been concluded till date, however, from the report of the learned trial court, it would appear that the court has issued several directions for evidence and process has been issued for production of prosecution witnesses. It is submitted that now two witnesses remain to be examined.

9. Having regard to the submissions noted hereinabove, considering that the charges were framed in this case for more than three years ago and even as this Court had directed the prosecution to produce the witnesses and co-operate in course of trial, it is found that the prosecution has failed to produce the witnesses. One of the submissions of learned counsel for the appellant is that in such circumstance, when the trial is not being concluded despite stay of the appellant in jail for about four years four months and for more than three years after framing of charge, the fundamental right of the appellant to get speedy justice is being violated. While agreeing with the submission, this Court sets aside the impugned order and directs release of the appellant above named on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned Special Judge (SC & ST Act), Patna in connection with

Special Case No. 280 of 2020 arising out of Danapur P.S. Case No. 305 of 2020, subject to the condition as laid down under Section 437 (3) Cr.P.C.

10. And, further condition that the learned trial court shall verify the criminal antecedent of the appellant and in case at any stage it is found that the appellant has concealed his criminal antecedent, the learned court shall take steps for cancellation of bail bond of the appellant. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

11. And, further condition that the appellant shall ensure his presence in the learned trial court on the dates fixed in the matter and, in case, it is found that he has remained absent on two consecutive dates, his bail bond shall be cancelled by the learned trial court.

12. And, further condition that if it is found that the appellant is indulging in threatening of any of the witnesses of this case, it will be open to the informant's family to file an application before this Court for cancellation of bail bond.

13. Let a copy of this order be sent to the Director, Prosecution and the Senior Superintendent of Police, Patna to

find out as to why despite issuance of process by the learned trial court, the prosecution witnesses were not produced on the date fixed in the matter and the responsibility in this regard be fixed upon the erring official/person.

14. This appeal stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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