

(2011) 07 JH CK 0006

Jharkhand High Court

Case No: B.A. No. 3540 of 2011

Binod Sharma @ Karimjee

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: July 15, 2011

Acts Referred:

- Arms Act, 1959 - Section 25(1), 26, 27, 35
- Criminal Law (Amendment) Act, 1932 - Section 17, 3, 439, 440, 5
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 307, 353

Hon'ble Judges: Dhirubhai Naranbhai Patel, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

D.N. Patel, J.

This application has been preferred under Sections 439 and 440 of the Code of Criminal Procedure in connection with the offence registered with Barwadih P.S. Case No. 36 of 2004, corresponding to G.R. No. 186(A) of 2004 (S.T. No. 86 of 2009), for the offence punishable under Sections 147, 148, 149, 307, 353 of the Indian Penal Code, Section 25(1B)(a), 26, 27 and 35 of the Arms Act, Section 17 of Criminal Law Amendment Act and Section 3/5 of the Explosive Substance Act, pending in the Court of learned Sessions Judge at Latehar.

2. Having heard learned Counsel for both the sides and looking to the evidences on record, it appears that there is, *prima facie*, a case against the present applicant. Previously also on three different occasions, bail applications bearing B.A. No. 953 of 2009, B.A. No. 2666 of 2010 and B.A. No. 9053 of 2010, preferred by the present applicant, have been dismissed on merits vide order dated 17th April, 2009, 23rd April, 2010 and 21st January, 2011 respectively. Paragraph 3 of the order passed by this Court in B.A. No. 953 of 2009, on 17th April, 2009 reads as under:

3. Looking to the evidence collected during the course of investigation and looking to the involvement of the present applicant in the offence as alleged by the prosecution and also looking to the recovery of sizeable number of fire arms and cartridge and also looking to the fact that there are more than half a dozen antecedents of the present applicant and it also appears that the Petitioner was absconding from the date of offence i.e. in April, 2004 and he was remanded on 19th June, 2008 i.e. after four years. The Petitioner was not traceable, though he was named in the F.I.R. In these circumstances, I am not inclined to enlarge the present applicant on bail otherwise he will not be available at the time of trial or he may tamper with evidence.

3. Thus, there are more than half a dozen antecedents of the present applicant and he was also absconding, as stated hereinabove. Moreover, the trial has already been started and few of the prosecution witnesses have already been examined. Rest of the prosecution witnesses are police witnesses. The concerned police officer is also called in the open Court and he has assured this Court that they are going to examine further prosecution witnesses, who are police witnesses.

4. Looking to the gravity of the offence, quantum of punishment and the manner in which the present applicant is involved in the offences, as alleged by the prosecution and also keeping in the mind the earlier antecedents of the applicant and the fact that previously on three different occasions, bail applications, preferred by him, have been dismissed on merits, I am not inclined to enlarge the present applicant on bail, otherwise, if the applicant is enlarged on bail, there are all chances that he may not be available at the time of trial or he may tamper with the evidences. There is no substance in this bail application and, hence, the same is, hereby, dismissed.

5. In the facts of the present case, it is submitted by learned A.P.P. that most of the witnesses are police witness except two, who are witnesses of Panchnama. All care should have been taken by the Home Department that their witnesses may be examined in time. It is submitted by learned Counsel for both the sides that in this case, last witness was examined in the month of January, 2010.

6. I therefore direct the Secretary, Home Department, Government of Jharkhand, Ranchi that the police witness must be examined earliest and necessary circular may be issued to this regard especially for this case, where most of the police witnesses are belonging to the State of Jharkhand and few of them are belonging to C.R.P.F., who have been transferred out of the State of Jharkhand, as submitted by learned A.P.P. Their presence can also secure efficiently by the Investigating Officer so that the trial, pending against the applicant, may be over within least possible time.