
(2006) 10 JH CK 0019
Jharkhand High Court
Case No: None

Fulchu @ Jeet Goswami

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision: Oct. 9, 2006

Acts Referred:

- Arms Act, 1959 - Section 27
- Criminal Procedure Code, 1973 (CrPC) - Section 167, 439
- Penal Code, 1860 (IPC) - Section 302, 307, 326, 34

Citation: (2007) 1 JCR 507

Hon'ble Judges: M. Karpagavinayagam, C.J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

M. Karpagavinayagam, C.J.

Heard.

2. This revision is directed against the order refusing to grant bail to the petitioner u/s 167(2) of the Code of Criminal Procedure. The short facts are as follows:

The occurrence took place on 19th February, 2006. According to the prosecution, two accused persons, namely Ranjit Rewani and Deepak Chouhan along with two other accused came to the house of the deceased and fired shot on one Anil Kumar Yadav and Sanjay. On the way to hospital, the said Anil Kumar Yadav died and Sanjay Kumar got treated in the hospital. The case was registered on the complaint given by the brother of Anil Kumar Yadav for the offence u/s 326/307/302/34 of the Indian Penal Code and Section 27 of the Arms Act. As far as petitioner is concerned, it is stated that he came to the house of the deceased in another vehicle and when the other accused fired shot at the injured and deceased, in side the house, he was waiting outside the house. He was arrested and remanded on 21.2.2006 and the bail

application has been filed on 22.5.2006 u/s 167(2), CrPC. Since chargesheet was filed on 22.5.2006 i.e. 90th day, the bail application was dismissed on 23.5.2006, on the ground that chargesheet was filed in time on 90th day and as such he is not entitled to bail u/s 167(2), CrPC. This order was challenged by the petitioner before the Court of Sessions, which, in turn, set aside the order of dismissal and remanded the matter vide order dated 20.7.2006, directing the Magistrate to reconsider the bail application. Accordingly, the Chief Judicial Magistrate considered the arguments advanced by the counsel for the petitioner as well as the APP and in the light of the order of the Session Judge, held that the chargesheet has been filed on 90th day and as such accused/petitioner could not be entitled to bail under the provisions of Section 167(2), CrPC.

3. The said order dated 8.8.2006 is challenged in this revision petition.

4. Though the counsel for the petitioner on the strength of various decisions of the Supreme Court, particularly [Uday Mohanlal Acharya Vs. State of Maharashtra](#), contended that indefeasible right accrued to the accused cannot be defeated. Ultimately, counsel for the petitioner submits that even assuming that he is not entitled to bail u/s 167(2), CrPC, in view of the fact that petitioner was standing outside the house in which the occurrence took place, he may be considered for bail under the provisions of Section 439, CrPC.

5. Of course, this Court can direct the petitioner to file a separate application u/s 439, CrPC, but that, in my view, is not necessary, since this Court can invoke the provisions of Section 439, CrPC keeping in view the peculiar facts of the case, inasmuch as, admittedly the petitioner was standing outside the house and the overt act has been attributed to Ranjit Rewani and Deepak Chouhan alone who are said to have entered the house and fired shot at the deceased. It is stated that bail applications by the other main accused have already been dismissed earlier by the Sessions Court and they have now filed bail application before the High Court, which is pending.

6. The case of the petitioner would not be considered to be similarly placed to that of those two accused. Admittedly as per the prosecution they have caused injury on the deceased and specific overt act had been attributed to them in respect of murder. On the other hand, keeping in view the fact that the petitioner, who is a young man of 25 years of age, was standing outside the house and languishing in jail custody for the past seven months", this Court is inclined to grant him bail, subject to certain condition. It is also made clear that the ground on which bail is granted to the petitioner would not apply to the other accused to whom specific overt act has been alleged.

7. Accordingly, the petitioner (Fulchu @ Jeet Goswami) is directed to be enlarged on bail on executing bond of Rs. 5,000/-with two sureties of the like amount each to the satisfaction of Judicial Magistrate, Dhanbad in Dhanbad PS Case No. 129 of 2006

(G.R. No. 560 of 2006), subject to the condition that the petitioner shall report to the committal Court, once in a month, 1st working day of every month.

This revision application stands disposed of.