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**(1999) 08 PAT CK 0034**

**Patna High Court**

**Case No:** Criminal Miscellaneous No. 15165/99

Sidhartha

APPELLANT

Vs

The State of Bihar

RESPONDENT

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**Date of Decision:** Aug. 13, 1999

**Acts Referred:**

- Arms Act, 1959 - Section 27
- Constitution of India, 1950 - Article 21
- Criminal Procedure Code, 1973 (CrPC) - Section 164, 164(2), 173
- Penal Code, 1860 (IPC) - Section 120B, 226, 302, 307

**Citation:** (1999) 3 PLJR 432

**Hon'ble Judges:** P.K. Sarkar, J

**Bench:** Single Bench

**Advocate:** R.K. Jain, Manoj Goel, Rudreshwar Singh, Yogesh Chandra Verma, Prafull Chandra Jha and Varun Pd. Singh, for the Appellant; S.D. Yadav, for the Respondent

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**Judgement**

@JUDGMENTTAG-ORDER

P.K. Sarkar, J.

One Supplementary affidavit and another additional affidavit had been filed on behalf of the Petitioner at the time of hearing. They are kept on record.

2. This application for bail filed by the Petitioner Sidhartha was put up yesterday for hearing. Sri R.K. Jain, Senior Advocate for the Petitioner and Sri S.D. Yadav, Special Public Prosecutor appearing on behalf of the State were heard.

3. The brief facts of this case may be mentioned as follows. Initially, this case was instituted on the basis of Fard Beyan of one Rohan Prakash under Sections 307, 226 I.P.C. and 27 of the Arms Act. Subsequently, Section 302, 120(B) I.P.C. were also added. The informant Rohan Prakash was alleged to be studying at the residence of Prof. J.C. Banerjee at Rajendranagar, Patna just before the time of occurrence. The

deceased Abhisek was also studying with him. At that time one boy came and called Abhisek (deceased). Abhisek went out of the door He was fired by that boy and he was killed. In course of investigation the Police found that the entire occurrence happened on alleged conspiracy hatched up at the bedroom of this Petitioner Sidhartha. Sidhartha executed the entire game plan through co-accused Amit Das. The Police arrested co-accused Amit Das who gave his statement u/s 164(2) Code of Criminal Procedure before the Judicial Magistrate and accepted the entire conspiracy hatched up by this accused-Petitioner Sidhartha. He also accepted the fact that he committed the murder at the instigation of the Petitioner. The motive for the occurrence was said to be the fact that the informant Rohan Prakash was in love with Pallavi, a co-student who used to take tuition from Prof. J.C. Banerjee alongwith Abhisek. It is said that Rohan Prakash used to love Pallavi but Pallavi used to love Abhisek. this infuriated the co-accused persons and under the guidance of the Petitioner, the occurrence happened. Initially, the F.I.R. was instituted against unknown, Subsequently, the Police found the conduct of the informant Rohan Prakash suspicious and the informant alongwith the Petitioner Sidhartha, Amit Das and one Luxman the servant of the Petitioner, were made accused in this case. However, co-accused Luxman is absconding and thus, the investigation is still pending against him.

4. Admittedly, the prayer for bail of this Petitioner was rejected earlier on 31.3.99 in Cr. Misc. No. No. 1740/99 by this Court. Subsequently, the prayer for provisional bail of the Petitioner was twice rejected in different Cr. Misc. cases at different times.

5. Mr. R.K. Jain, learned Senior counsel for the Petitioner submitted that earlier while the prayer for bail was rejected the Petitioner was not in possession of all the Police papers required u/s 173 Code of Criminal Procedure and so he could not put up his case properly as a result his prayer for bail was rejected. Moreover, from Annexure-15 to the Supplementary affidavit it will appear that the co-accused Rohan Prakash has been granted bail by the Supreme Court of India. According to the learned Senior counsel, these two facts have given additional facts for the cause of action for this petition.

6. The main contention of the learned Senior counsel for the Petitioner in his submission is that this is a case of insufficient evidence or having no evidence. He has challenged the confessional statement of co-accused Amit Das recorded u/s 164(2), Code of Criminal Procedure stating that the same was not voluntary and was not recorded in the true spirit of the law, moreover, the aforesaid confessional statement can not form the basis of the allegations against the Petitioner. At best it can be used as a corroborative evidence, in case, however, the said is found to be genuine. The second contention of Sri Jain was that the statement of the witnesses namely, Rajiv Ranjan, R.K. Banerjee and Haridwar Singh on the basis of which the prosecution was mainly placing reliance, raises a suspicion for which full reliance can not be placed on them. The statements of these witnesses have been recorded

after sufficient delay. It appears that the investigation has been given a definite twist after the supervision notes of the Senior S.P. Patna, which finds place in paragraph 236 of the Case Diary. It is said that, thereafter, the theory of the Petitioner's presence in the place of occurrence and asking co-accused Amit Das to quit the place was introduced. The third contention of the learned Senior counsel for the Petitioner was that the Test Identification parade was myth and stage managed show. The detail in holding the Test identification parade and the manner in which it has been done and the conduct of the identifying witness raises a reasonable doubt on the merit of the Test Identification parade. It is further contended that the Petitioner and Amit Das were managed to be identified by Haridwar Singh while they were in Police remand and also in the Police Station where he got an opportunity to see the accused persons. It is, therefore, submitted that delay in conducting the Test Identification parade coupled with the fact that the identifying witnesses got an opportunity to see the accused persons, takes away the entire merit of the identification in the Test Identification parade by the identifying witness Haridwar Singh. It is further contended that Mrs. Rekha Banerjee, wife of Prof. J.C. Banerjee, who was first to come out from the house when Abhisek was called for from outside. She got an opportunity to see the boy who came to call Abhisek. So, she was the best person who could have identified the accused persons in the Test Identification parade. But the Police did not call her for the same. It is further submitted that the case is still pending at the stage of commitment and so the Petitioner can not be put behind the bar for an indefinite period.

7. The learned Senior counsel for the Petitioner, therefore, submits that practically there is no evidence against the Petitioner. It is alternatively submitted that even if the allegations against the Petitioner are found to be prima-facie true, the Petitioner is entitled for bail unless it is established that the Petitioner, if released on bail, will tamper the evidence or will prejudice the case otherwise.

8. The learned Senior counsel for the Petitioner on the basis of different decisions of the Supreme Court has tried to establish the aforesaid points of law regarding delay in recording the evidences, delay in conducting the Test Identification parade and also the Petitioner's claim of being released on bail even if there is prima-facie case unless the facts of tampering of evidence are proved.

9. Mr. Jain, learned Senior counsel appearing on behalf of the Petitioner mainly stressed on a decision of the Supreme Court reported in [Shivappa Vs. State of Karnataka](#), on the procedure in recording the confessional statements u/s 164 Code of Criminal Procedure. It is submitted that in the decision cited above the Supreme Court has observed that in the enquiry before recording the statements u/s 164 Cr.P.C, the Magistrate must ascertain the voluntary nature of the confession. This enquiry appears to be the most significant and important part of the duty of the Magistrate recording the confessional statements of an accused u/s 164 Code of Criminal Procedure. The failure of the Magistrate to put such questions from which

he could ascertain the voluntary nature of the confession detracts so materially from the evidentiary value of the confession of an accused that it would not be safe to act upon the same. Full and adequate compliance not merely in form but in essence with the provisions of Section 164 Code of Criminal Procedure is necessary.

10. It is submitted that the questions put by the Magistrate before recording the statement of co-accused Amit Das u/s 164 Code of Criminal Procedure are not adequate and the confessional statements so recorded can not be relied.

11. Mr. Jain, learned Senior counsel for the Petitioner also argued that in a decision reported in [Chandrakant Chimanlal Desai Vs. State of Gujarat](#), the Supreme Court has held that prosecution making the confessional statement as the basis and then looking for corroboration and concluding that the confession corroborated in material particulars by prosecution witnesses is also an approach which is erroneous. In that view, even if there is some substance in the aforesaid confessional statements, that can not serve as the basis of the case. It can only be used for corroboration by the witnesses.

12. As mentioned above, the Petitioner has challenged the merit of the evidences of the witnesses on the ground of their delayed recordings and in this case the learned Senior counsel for the Petitioner has relied upon a decision reported in [Dinanath Singh and Ors Vs. State of Bihar](#). He has also placed reliance on a decision reported in [Subash and Shiv Shankar Vs. State of U.P.](#), challenging the merit of the Test Identification parade conducted in this case on the ground that the same was conducted after a long delay for which there is no reasonable explanation. It is submitted on behalf of the Petitioner that the three witnesses, namely, Dr. M. Prasad, Dr. Trivedi and Arun Kumar Singh who have supported the case of the Petitioner regarding his presence with them have also not been taken into consideration.

13. The learned Senior counsel for the Petitioner placed his reliance on a decision reported in [State of Bihar and Another Vs. P.P. Sharma, IAS and Another](#), wherein the Supreme Court has held that unless there is unimpeachable materials in the investigation, the personal liberty of a person can not be taken away as it will be against the Article 21 of the Constitution of India.

14. The learned Senior counsel for the Petitioner has also argued that co-accused Rohan Prakash has been granted bail by the Supreme Court in SLP (Crl.) No. 1706/99 and Cr. Misc. No. 3114/99 on 9.8.99 and submitted that since co-accused Rohan Prakash has been granted bail, the Petitioner should also be released on bail. 15. It is also submitted that the Petitioner is a good student and has secured good marks, though, he appeared in the examinations from the jail custody.

16. Mr. S.D. Yadav, learned Special Public Prosecutor appearing on behalf of the State, on the other hand, opposed the prayer for bail of the Petitioner vehemently stating that the earlier prayer for bail of this Petitioner was rejected by this Court on

31.3.99 discussing in detail every aspect of the case and within this period for near about five months no change has taken place for which a different opinion can be taken by this Court. It is further submitted that the prayer for provisional bail of the Petitioner was rejected twice in between. He further submits that no irregularity as pointed out on behalf of the Petitioner in recording the statement of co-accused Amit Das u/s 164(2) Code of Criminal Procedure was committed by the recording Magistrate. The recording Magistrate gave sufficient time and also explained the consequences to Amit Das before his statement was recorded. It is true that subsequently Amit Das retracted from his confession by giving another statement. But that can not take away the merit of the earlier confession.

17. The learned Special Public Prosecutor appearing on behalf of the State also denied the fact that there was any theory to be forwarded by Senior S.P. Patna, as contended by the learned Senior counsel for the Petitioner. There was no specific delay in recording the evidence of the witnesses as pointed out on behalf of the Petitioner. He has also claimed that identification by Haridwar Singh of the Petitioner was also correct and the objection petitions were filed only to strengthen the case of the defence. It is further submitted that the case of co-accused Rohan Prakash is completely different than that of the Petitioner. Co-accused Rohan Prakash was not present at the place of occurrence. Moreover, the pistol was also supplied by this Petitioner through his servant Luxman to co-accused Amit Das. The statements of the other witnesses also point mainly towards this Petitioner as the main person behind the entire episode. Thus, the privilege of bail which has been granted to co-accused Rohan Prakash by the Supreme Court can not be given to this Petitioner as his case does not stand on the same footing. It is also contended that there are evidence in the Case Diary that the father of the Petitioner tried to tamper with the evidences inasmuch as he went to the house of the co-accused Luxman at Muzaffarpur. The learned Special Public Prosecutor, therefore, submits that the Petitioner does not deserve bail.

18. The learned Special Public Prosecutor has also placed reliance on a decision reported in [Bheru Singh Vs. State of Rajasthan](#), . He has also placed reliance on a decision reported in [Sarwan Singh Vs. The State of Punjab](#), , stating that there is no hard and fast rule for giving time for reflection before recording the confession. He has mainly tried to stress that there is no abnormal delay in recording the evidences of the witnesses and also in the Test Identification parade and the evidences on record are quite reliable. Sufficient time was given to the accused persons before making their confessional statements.

19. It is also submitted on behalf of the prosecution that due to refusal of the accused persons to take copies of the Police papers u/s 173 Code of Criminal Procedure the commitment was delayed. It is also submitted that the enquiry regarding the fact whether co-accused Amit Das is a juvenile or not is to be conducted within four weeks as per direction of a Bench of this Court and, thus, the

prosecution is taking all possible steps so that the case is expedited and may not linger unnecessarily.

20. So far the principle of law is concerned, there is no dispute. However, within this framework for application for bail, I do not feel it proper to discuss the merits of the different evidences collected in the Case Diary at this stage because that may affect the merit of the trial. Admittedly, while deciding the question of bail, only fact to be looked into is whether there is a prima-facie evidence against the accused persons and secondly, whether the release of the accused may hamper the trial of the case.

21. The prosecution has tried to base its case on the confessional statement of co-accused Amit Das, on the statements of other witnesses who saw the Petitioner near the place of occurrence at the time of the occurrence and also conducted Test Identification parade in which one Haridwar Singh identified the Petitioner. The matter was earlier considered by this Court on 31.3.99 and the petition for bail of this Petitioner was rejected on merit. At that time also, the Case Diary was perused and the different evidences on record were considered.

22. I do not find any change or circumstances in between this period except the fact that co-accused Rohan Prakash has been granted bail by the Supreme Court on 9.8.99. There is no doubt on the fact that the case of co-accused Rohan Prakash stands completely on different footing than that of the case of the Petitioner and in no way it can be said that both of them stand on the same footing and, thus, the Petitioner is also entitled for a similar order. Thus, there is no changed circumstances in which any fresh decision is required to be taken in this case. However, considering the age of the Petitioner and also the fact that he is in custody, it is essential that the trial be expedited. Admittedly, Police papers have already been served on the Petitioner and others. Hence, there should not be any delay in the commitment and subsequently with trial of the case. As appears from the submissions of the learned Special Public Prosecutor that in a separate proceeding, a Bench of this Court has already directed to expedite the enquiry to see whether co-accused Amit Das is a juvenile and finish it within four weeks. If that is done, it is expected that the trial court will finish the trial within a period of nine months. In case the trial is not so completed, the Petitioner have a right to renew his prayer for bail.

23. It is expected that the Petitioner and the other accused persons will also co-operate during the trial for early disposal of the case.