

(2016) 09 PAT CK 0096

PATNA HIGH COURT

Case No: Criminal Appeal (SJ) No. 434 of 2016, (Arising Out of PS.Case No. 79 Year - 2015
Thana - Tatarpur District - Bhagalpur).

Bikki Rajpal, son of Sri
Maheshwar Rajpal, resident of
muhalla - Urdu Bazar, P.S. -
Tatarpur, District - Bhagalpur -
Appellant @HASH The State of
Bihar

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 8, 2016

Acts Referred:

- Arms Act, 1959 - Section 25(1-B)(a), Section 26
- Criminal Procedure Code, 1973 (CrPC) - Section 398(2)

Citation: (2016) 4 ECrC 513 : (2017) 2 PCCR 115

Hon'ble Judges: Ashwani Kumar Singh, J.

Bench: Single Bench

Advocate: Mr. Diwakar Upadhyaya, Advocate, for the Appellant; Mr. Kumar Ranjit Ranjan, APP, for the Respondent

Final Decision: Disposed Off

Judgement

Mr. Ashwani Kumar Singh, J. (Oral)—This application under Section 389(2) of the Code of Criminal Procedure (for short "Cr.P.C.") has been filed by the appellant seeking bail in connection with Cr. Appeal No. 29 of 2016 pending before the learned Sessions Judge, Bhagalpur.

2. The appellant has been convicted by the learned Chief Judicial Magistrate, Bhagalpur vide judgment dated 06.02.2016 for the offences punishable under Sections 25(1-B)(a) and 26 of the Arms Act and has been sentenced to undergo R.I. for two years and fine of Rs. 500/- for each sections and, in default, to undergo S.I. of

one month separately. The sentences have been ordered to run concurrently and the period spent in custody has been directed to be set off while calculating the period of sentence awarded to the appellant.

3. The judgment of conviction and order of sentence passed by the learned Chief Judicial Magistrate, Bhagalpur was challenged in appeal before the Sessions Judge, Bhagalpur vide Cr. Appeal No. 29 of 2016. In the said appeal, an application under Section 389(1) of the Cr.P.C. was filed on behalf of the appellant but the appellate court, vide order dated 06.04.2016, while admitting the appeal, dismissed the application preferred under Section 389(1) of the Cr.P.C.

4. Therefore, the present application under Section 389(2) of the Cr.P.C. has been filed before this Court.

5. It is submitted by the learned counsel for the appellant that the learned Chief Judicial Magistrate, Bhagalpur has not been appreciated the evidence on record in correct perspective.

He has submitted that the seizure list witnesses, namely, Prince Raj and Chhotu Rajak have not supported the prosecution case and they were examined as defence witnesses. Both of them have stated during trial that nothing was recovered from the possession of the appellant in their presence. It is further contended that there is also no evidence that any looted money was recovered from possession of the appellant and the alleged amount, i.e., Rs. 21,500/- said to have been recovered from possession of the appellant was the hard earned money of the appellant. The money recovered had no identification mark so that it may be called that it was the looted money.

6. It is also urged that there is absence of any cogent evidence on record to establish that the alleged country-made pistol and live cartridge were recovered from possession of the appellant.

It is further urged that the informant of the case took signature of the appellant on plain papers and implicated him falsely in the present case.

7. On the other hand, learned counsel for the State has submitted that on proper appreciation of facts and law, the court below has convicted the appellant. He has submitted that from the record itself, it would transpire that the appellant has also criminal history and in view of the fact that the appellate court is in seisin of the matter, it would not be proper to release the appellant on bail.

8. I have heard learned counsel for the parties and perused the record.

9. Regard being had to the evidence on record, I am not inclined to suspend the sentence of the appellant and release him on bail at this stage. Accordingly, his application preferred under Section 389(2) of the Cr.P.C. is, hereby, rejected. However, as the appellant is reported to be in custody since 6th July, 2015 and the

maximum sentence awarded is two years, the learned Sessions Judge, Bhagalpur is directed to hear the appeal of the appellant on priority basis and dispose of the same as early as possible, preferably within thirty days from the date of receipt of a copy of the order.