

**(2011) 10 JH CK 0068**  
**In the Jharkhand High Court**  
**Case No : Writ Petition (Cr) No. 156 of 2011**

Amit Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 21-10-2011

**Acts Referred:**

**Citation :** (2012) 1 JCR 131

**Hon'ble Judges :** Prakash Tatia, C.J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

1. Learned counsel for the petitioner submitted that the writ petitioner is in illegal custody of the police since 17.4.2010. It is submitted that the petitioner is accused in five cases out of which he has been granted bail in four cases and in one case he has been acquitted. It has been stated that in one of the case, though production warrant has been issued from the trial Court from the State of Bihar but in that case, the petitioner was never produced before the trial Court and therefore, that trial Court has never passed the order of remand so as to keep the petitioner in police custody.

2. The respondent submitted a counter-affidavit in which it has been stated that the petitioner is accused in nine cases, details of which has been given in para-3 of the counter-affidavit. In para-4, it is specifically admitted that the petitioner has been acquitted or granted bail in all the cases except the cases registered at Fathua P.S. Case No. 150/10 and B.S. City Case No. 414/10. In counter-affidavit, it has not been stated that the writ petitioner was to be produced before the Court from where production warrant was issued long back but it has not been stated that the petitioner has been produced before that Court and that Court has ordered to keep the petitioner in custody in Fathua P.S. Case No. 150/10 and B.S. City Case No. 414/10.

3. However, the learned counsel for the petitioner submitted that the petitioner

has already been granted bail in B.S. City Case No. 414/10 also and therefore, he is not required in that case.

4. On 16.9.2011 when the matter was taken up for consideration, even at that time, the respondent State failed to show that the petitioner was produced in the Court in Patna City(Bihar) in connection with the case registered in the State of Bihar. This Court had observed that if the production warrant is received by the respondent State i.e., State of Jharkhand or State Officer, then they will be free to produce the writ petitioner before the said Court at Patna City. In spite of said order dated 16.9.2011, even by now, the respondent State is not in a position to say that the writ petitioner was produced before the Court at Patna City and he has been directed to keep the petitioner in custody in the said criminal case or any other criminal case.

5. It is very strange that even after knowing that the petitioner is not in custody under any lawful order yet the respondent deliberately did not release the petitioner from the illegal custody. Even the accused has right of liberty till he is taken in custody by any lawful order.

6. In view of the above reasons, this writ petition deserves to be allowed as even today the respondent-State has failed to produce any document to show that the petitioner has been kept in custody under any lawful order. It is made clear that if any production warrant has been issued by any Court to produce the petitioner and the petitioner is not produced in response to that order then the officer responsible shall personally liable to such criminal act of allowing the accused to go out from custody and may be liable to be prosecuted.

7. Therefore, this writ petition is allowed with a nominal cost of Rs. 10000/- (Ten thousand) to be recovered from the officer in whose custody the petitioner is at present and to be paid to the petitioner. This Court has granted a nominal cost as compensation to be paid to the petitioner. The respondent State is directed to release the petitioner forthwith, if not required in any other case and not required to be produced in response to any process and no order is obtained for custody.