
(2019) 07 JH CK 0087

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 969 Of 2018

Arun Bara

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 02-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 302, 354
Prevention Of Witch Practices Act, 1999 — Section 3, 4

Citation : (2019) 07 JH CK 0087

Hon'ble Judges : Aparesh Kumar Singh, J; Kailash Prasad Deo, J

Bench : Division Bench

Advocate : Shekhar Prasad Sinha, Vandana Bharti

Final Decision : Allowed

Judgement

Heard learned counsel for the appellant and learned A.P.P. for the State on the prayer for suspension of sentence made through I.A. No. 5221 of 2019.

Sole appellant along with six others have been convicted for the offence punishable under Sections 302/354 of I.P.C and 3 & 4 of the Prevention of Witch Practices Act, 1999 by the impugned judgment dated 2nd August, 2018 rendered in Sessions Trial No. 347 of 2016/T.R. No. 15 of 2018 by the Court of learned Additional Judicial Commissioner-VII-cum-Spl. Judge, C.B.I. (AHD)-cum-Spl. Court (CAW), Ranchi and have been sentenced to undergo Rigorous Imprisonment for life with a fine of Rs. 25,000/- each under Section 302 of I.P.C with a default sentence; Rigorous Imprisonment for five years under Section 354 of I.P.C with a default sentence; Rigorous Imprisonment of three months with a fine of Rs. 1,000/- each for the offence punishable under Section 3 of the Prevention of Witch Practices Act, 1999 with a default sentence and also sentenced to undergo Rigorous Imprisonment for six months with a fine of Rs. 2,000/- each for the offence punishable under Section 4 of the Prevention of Witch Practices Act, 1999 with a default sentence. All the sentences have been ordered to run consecutively.

Learned counsel for the appellant submits that five other co-convicts have preferred Cr. Appeal (D.B) No. 1106 of 2018 against the common impugned judgment. They have been enlarged on bail by granting them suspension of sentence during pendency of the appeal vide order dated 15th May, 2019 passed by a co-ordinate Bench of this Court. Allegation and evidence as against this appellant is also same and similar. Therefore, appellant may be enlarged on bail by granting him privilege of suspension of sentence during pendency of this appeal.

Learned counsel for the appellant also submitted that in Cr. Appeal (D.B) No. 1060 of 2018 arising out of Sessions Trial No. 345 of 2016, appellant has been granted bail by this Bench vide order dated 24th June, 2019 taking into account that other eight co-convicts have been granted bail by a co-ordinate Bench of this Court in Cr. Appeal (D.B) No. 1107 of 2018.

When the matter was taken up on 25th June, 2019, it transpired that the appellant has been convicted in two similar cases. Learned Additional Public Prosecutor was directed to ascertain as to how many F.I.Rs have been instituted at Mandar Police Station on 22nd June, 2016 with same and similar allegations in respect of the same place of occurrence and the corresponding Sessions Trial Cases; number of the accused persons, who are facing trial in those cases and those who have been convicted/acquitted by the concerned Court.

Learned counsel for the appellant was also directed to file an affidavit stating as to in how many cases the appellant is facing trial of similar nature and convicted; the number of concerned appeals, if any preferred against those convictions.

On behalf of the appellant affidavit has been filed on 27th June, 2019, inter alia, stating that on the allegation of killing of five ladies practicing witchcraft four separate police cases, namely, (1) Mandar P.S. Case No. 91/2015(S.T. No. 347/16), (2) Mandar P.S. Case No. 89/2015 (S.T. No. 2/16), (3) Mandar P.S. Case No. 92/2015(S.T. No. 346/16) and (4) Mandar P.S. Case No. 90/2015(S.T. No. 345/16) have been registered. In these four Sessions Trial appellant has been acquitted in Sessions Trial No. 346/16 arising out of Mandar P.S. Case No. 92/2015 while six others were convicted.

Learned counsel for the State has also filed an affidavit today, wherein at para-6 onwards the following facts have been stated. Four F.I.Rs were instituted under Mandar Police Station as named above.

Altogether nine Sessions Trials have been conducted arising out of four F.I.Rs, which are as follows:

Sl.No.

S.T.No.

Arising out of Mandar P.S Case No.

01.

002/2016

89/2015

02.

345/2016

90/2015

03.

346/2016

92/2015

04.

347/2016

91/2015

05.

285/2018

89/2015

06.

219/2019

91/2015

07.

220/2019

91/2015

08.

221/2019

91/2015

09.

222/2019

89/2015

In S.T. No. 02/2016 there were 39 accused persons; S.T.No. 346/2016 there were same 40 accused as in S.T.No. 345/2016; in S.T.No. 347/2016 same 40 accused as in S.T.No. 345/2016; S.T.No. 285/2018 trial is pending as against accused, Mangal Khalkho; S.T. Nos. 219/2019,220/19,221/2019 and 22/2019 have been amalgamated as against three accused persons.

At Para-9 name of the convicts in each of the four Sessions Trial which has been concluded, has been given while other five Sessions Trial are still pending. It is appropriate to extract the chart showing the Sessions Trial no. and name of the convicts as against them in these four Sessions Trial Cases.

Sl.No.

S.T.No.

Convicts

01.

02/2016

Burnwas Khalkho, Xaveer Khalkho, Mojesh Khalkho, Krishna Khalkho, Baldeo Khalkho, Sannu Oraon, Sannu Khalkho, Arun Bara, Sandip Khalkho, Sachin Khalkho, Albinus Khalkho

02.

345/2016

Sandip Khalkho, Sachin Khalkho, Romit Khalkho, Xaveer, Khalkho, Mojesh Khalkho, Krishna Khalkho, Baldeo Khalkho, Arun Bara, Rajesh Tigga

03.

346/2016

Mojesh Khalkho, Xaveer Khalkho, Sachin Khalkho, Sandip Khalkho, Krishna Khalkho, Baldeo Khalkho,

04.

347/2016

Sandip Khalkho, Sachin Khalkho, Krishna Khalkho, Baldeo Khalkho, Xaveer Khalkho, Rajesh Tigga, Arun Bara

05.

285/2018

Trial is pending

06.

219/2019

Trial is pending

07.

220/2019

Trial is pending

08.

221/2019

Trial is pending

09.

222/2019

Trial is pending

Lower Court Records of all these four Sessions Trial have been summoned before this Court in connection with the appeals preferred by the convicts thereunder. F.I.R no. Sessions Trial no., date and time of institution of Fardbeyan; name of the informant; total number of named accused persons in each of these F.I.Rs and the Police Officer, who recorded the Fardbeyan are being incorporated in the form of a chart hereinbelow:

F.I.R No.

S.T.No.

Date & Time of institution of Fardbeyan

Informant

Total named accused

Police Officer recorded Fardbeyan

89/2015

02/16

08.08.2015 at 1.00 hours

Anima Khalkho

49

A.S.I., Kameshwar Prasad Singh

90/2015

345/16

08.08.2015 at 1.15 hours

Sukumar Khalkho

47

S.I., Ram Narayan Singh, O.C

91/2015

347/16

08.08.2015 at 1.10 hours

Sibi Khalkho

49

S.I. S.C Kondangkel

92/2015

346/2016

08.08.2015 at 1.10 Hours

Suna Khalkho

58

S.I. S. Sundi

Purpose for which the above details have been extracted shall be dealt with in the later part of this order.

Learned Additional Public Prosecutor has in course of argument opposed the prayer for suspension of sentence of this appellant on merits. He submits that five ladies were killed on the allegations of practicing witchcraft, which has led to the institution of four F.I.Rs. and corresponding 9 sessions trial. Appellant has faced conviction in three of the sessions trial cases while acquitted in one of them. Learned Additional Public Prosecutor, however, does not dispute that this appellant has been granted bail in Cr.Appeal(D.B) No. 1060 of 2019 arising out of Sessions Trial No. 345 of 2016. Other five co-convicts in the instant S.T No. 347 of 2016 have been enlarged on bail by a co-ordinate Bench of this Court on 15th May, 2019 in Cr.Appeal (D.B) No. 1106 of 2018.

We have considered the submission of learned counsel for the appellant and State and taken note of the facts and circumstances noted above as also the relevant material evidence relied upon by them on the prayer made for suspension of sentence of this appellant.

Having regard to the fact that other five co-convicts have been enlarged on bail by a co-ordinate Bench of this Court in Cr. Appeal (D.B.) No. 1106 of 2018 arising out of the same S.T. Case, we are inclined to enlarge the appellant on bail by granting him privilege of suspension of sentence during pendency of this appeal. Accordingly, let the appellant, Arun Bara be released on bail, during pendency of this appeal, on furnishing bail bonds of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each, to the satisfaction of learned Additional Judicial Commissioner-VII-cum-Spl. Judge, C.B.I. (AHD)-cum-Spl. Court (CAW), Ranchi in connection with Sessions Trial No. 347 of 2016/T.R.

No. 15 of 2018 arising out of Mandar P.S. Case No. 91 of 2015, corresponding to G.R. Case No. 4820 of 2015, subject to the condition that one of the bailors should be blood relative of the appellant. Appellant and his bailor shall not change their address without prior permission of Trial Court.

I.A. No. 5221 of 2019 stands allowed accordingly.

In view of the conspicuous facts noticed hereinabove, both from the affidavit of the State and the relevant material particulars culled out from the Lower Court Records in connection with four Sessions Trial cases named above, we consider it appropriate that the instant order be communicated to the Home Secretary, Government of Jharkhand, Director General of Police and Director (Prosecution), Jharkhand. It is expected that State functionaries would enquire and ascertain whether it was proper to record separate F.I.Rs for the above occurrences, which has led to nine separate trials when most of the accused persons are common and prosecution witnesses also appear to be common. Let a copy of this order be also sent to the Director, Judicial Academy.