
(2016) 05 JH CK 0149

In the Jharkhand High Court

Case No : Cr. Appeal (D.B.) No. 9 of 2015 with I.A. No. 117 of 2016

Bickey Lohar

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 26-05-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 389
Penal Code, 1860 (IPC) — Section 34, 364A

Citation : (2016) 4 ECRC 447 : (2016) 4 JBCJ 70

Hon'ble Judges : Mr. Virender Singh, CJ. and Mr. Anant Bijay Singh, J.

Bench : Division Bench

Advocate : Mr. B.M. Tripathy, Senior Advocate, Mr. Naveen Kr. Jaiswal, Advocate, for the Appellants; Mr. S.K. Pandey-II, A.P.P, for the State

Final Decision : Dismissed

Judgement

Virender Singh, C.J.—I.A. No. 117 of 2016

Applicant-appellant is praying for suspension of substantive sentence and bail during the pendency of the main appeal.

2. Heard Mr. Tripathy, learned Senior Counsel, assisted by Mr. Naveen Kumar Jaiswal and Mr. Pandey, the learned State counsel. Records also perused.

3. In all 6 accused stand convicted for the charge of Section 364-A/34 I.P.C and sentenced to imprisonment for life for allegedly kidnapping a young boy of 17 years namely, Alok Kumar (victim) who was temporarily handicapped on the date of occurrence after having met with an accident and got his hand fractured for which reason, the applicant-appellant who originally hails from another State (Odisha) was employed temporarily to drop the victim to the school and to bring him back home. As per the prosecution case, applicant-appellant along with one Mintu Kumar Singh hatched the conspiracy of kidnapping the victim in which regard mock trial was also carried out in the morning. On the fateful day when he was taking the victim back to home, he stopped at one place, went aside

under the pretext of passing urine and then gave a signal by waving his hand to his co-accused, Mintu Kumar Singh and thereafter the kidnapping took place in which others were also involved and ultimately the victim was recovered from the house of Rakesh Kumar Verma @ Chandrabansi @ Rakesh Chandrabanshi @ Sunny (accused in this case).

4. We are conscious of the fact that three of the coconvicts of the applicant-appellant namely, Mintu Kumar Singh with whom the applicant-appellant had allegedly hatched conspiracy, Rakesh Kumar Verma @ Chandrabansi @ Rakesh Chandrabanshi @ Sunny from where the allegedly kidnapped victim was recovered by the police and Sanjay Sahu @ Bhakru who happened to be the driver of the vehicle in which the victim was taken, have been granted the concession of suspension of sentence during the pendency of their appeals vide three different orders passed in three different appeals viz, Cr. Appeal (DB) No. 703 of 2014, Cr. Appeal (DB) No. 584 of 2014 and Cr. Appeal (DB) No. 237 of 2014. However, the case of the applicant-appellant, in our considered view, on facts, is altogether distinguishable from those of the aforesaid three convicts who have already been enlarged on bail as indicated herein above.

5. It appears that Sanjay Sahu @ Bhakru got the concession of suspension of sentence on the point of non-identification as P.W-8 did not identify him in the Test Identification Parade. The case of Rakesh Kumar Verma @ Chandrabansi @ Rakesh Chandrabanshi @ Sunny was found to be similar to that of Sanjay Sahu @ Bhakru and, therefore, he too was granted the same relief. While granting bail to Mintu Kumar Singh, the Court found that his involvement is primarily on the confession made by the present applicant-appellant before the police in which he also disclosed the role being played by his other co-accused. The applicant-appellant disclosed to the police that Mintu Kumar Singh had waved his hand to him at the relevant point of time so that the victim could be kidnapped. It was in the shape of a green signal to the party. It is a statement of an accused against the co-accused that too before the police.

6. The applicant-appellant was employed by the father of the victim, may be on temporary basis assigning him a particular job of taking the victim to the school in the morning and dropping him back after school hours. The father of the victim reposed confidence in the applicant-appellant without imagining in his wildest dreams that his son would fall prey at his hands. In our view, the applicant-appellant is the initiator of the crime. Had he not joined hands with his other co-accused or would not have agreed to be a partner of this serious crime, perhaps this grave incident could have been avoided. Therefore, the case of the applicant-appellant, in our view, is altogether different on merits from that of his co-convicts who have already been granted the concession of suspension of sentence by this Court on different dates as stated herein above and he does not deserve to be enlarged on bail.

7. The application on hand being devoid of any merit in it, thus, deserves to be dismissed. Ordered accordingly.

8. Let the instant appeal and other connected appeals be set down for final hearing on its usual turn.