

(2016) 12 JH CK 0043

In the Jharkhand High Court

Case No : Cri. Appeal (D.B.) No. 513 of 2016

Chhotu Pandey

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 09-12-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437
Penal Code, 1860 (IPC) — Section 364A

Citation : (2017) 1 AIRJharR 268 : (2017) 1 ECrC 671 : (2017) 1 JCR 700

Hon'ble Judges : Pradip Kumar Mohanty, ACJ. and Anand Sen, J.

Bench : Division Bench

Advocate : M/s. Nilesh Kumar, Advocate, for the Informant; M/s. A.K. Kashyap, Anurag Kashyap & Supriya Dayal, M/s. R.S. Mazumdar, Sr. Advocate, Jasvinder Mazumdar, Sheo Kumar Singh and Vijay Indrajit Sinha, Advocates, for the Petitioner; M/s. Sanjay Kumar Srivastava

Final Decision : Disposed Off

Judgement

I.A. No. 3786 of 2016 (In Cr.A. (D.B.) No. 513 of 2016).

Heard Mr. A.K. Kashyap, learned Sr. counsel appearing for the appellant, Mr. Sanjay Kumar Srivastava, learned Addl.P.P. appearing for State and also Mr. Nilesh Kumar, learned counsel appearing for the informant, on the Interlocutory application bearing I.A. No. 3786 of 2016, wherein prayer has been made to enlarge the appellant, namely, Chhotu Pandey alias Himanshu Pandey alias Himansu Kumar Pandey on bail, during the pendency of the instant appeal, after suspending the sentence.

2. Mr. A.K. Kashyap, learned Sr. counsel appearing for the appellant has submitted that absolutely there is no material or evidence against this appellant to show that he had made any demand of ransom and there is no nexus of the appellant in kidnapping the victim with the main accused persons. He further submits that P.W.7 victim has stated in his evidence that he was called by Pappu Pandey over phone about some important work and when he came near his old

house, Pappu and Rajesh Kumar Verma both of them on the point of pistol had made him to sit in the car, which was driven by Rajesh Kumar Verma. He further submits that at the time of confinement of the victim, there is no demand of ransom by this appellant and this appellant had allegedly followed the vehicle by motorcycle. He further submits that in his evidence P.W.7, victim has stated that he knew this appellant Chhotu Pandey alias Himanshu Pandey alias Himansu Kumar Pandey from earlier and the appellant is languishing in jail since 26.05.2014 i.e. for 2? years, therefore, the appellant may be released on bail.

3. Mr. Nilesh Kumar, learned counsel for the informant vehemently opposes the prayer for bail on the ground that as per the statement of P.W.7, victim, he was kidnapped from his old house and he was put in a vehicle by Pappu Pandey and Rajesh Kumar Verma and after some time near Redma over bridge this appellant Chhotu Pandey alias Himanshu Pandey alias Himansu Kumar Pandey and others followed the vehicle by motorcycle and, therefore, it is not a fit case to admit the appellant on bail.

4. Learned Additional Public Prosecutor appearing for the State vehemently opposes the prayer for bail adopting the arguments of the learned counsel for the informant. He further added that at the relevant time the victim was juvenile. Therefore, it is not a fit case to admit the appellant on bail during the pendency of the instant appeal.

5. Having heard learned counsel for the parties and after going through the judgment of the trial Court and considering the evidence of P.Ws. 5, 7 and 11 (I.O.) and the period of custody i.e. 2? years, during the pendency of the instant appeal, the trial court (Addl. Sessions Judge-IV, Palamau at Daltonganj) is directed to admit the present appellant, namely, Chhotu Pandey alias Himanshu Pandey alias Himansu Kumar Pandey, on bail on such terms and conditions, as he may deem fit and proper, in connection with Sessions Trial No. Sessions Trial No. 108 of 2015, subject to a further condition that he shall mark his attendance before the Daltonganj (Town) Police station once in a week. If he fails to appear in two consecutive weeks, it is open to the Officer-in-charge, Daltonganj (T) Police station to rearrest him and produce before the trial Court.

6. I.A. No. 3786 of 2016 stands disposed of.

I.A. No. 5231 of 2016 (In Cr.A. (D.B.) No. 488 of 2016).

7. Heard Mr. R.S. Mazumdar, learned Sr. counsel appearing for the appellant, Mr. Moti Gope, learned Addl.P.P. appearing for State and also Mr. Nilesh Kumar, learned counsel appearing for the informant, on the Interlocutory application bearing I.A. No. 5231 of 2016, wherein prayer has been made to enlarge the appellant, namely, Prakash Singh alias Prakash on bail, during the pendency of the instant appeal, after suspending the sentence.

8. Mr. R.S. Mazumdar, learned Sr. counsel appearing for the appellant has submitted that absolutely there is no material or evidence against this appellant

to show that he had made any demand of ransom and there is no nexus of the appellant in kidnapping the victim with the main accused persons. He further submits that P.W.7 victim has stated in his evidence he was called by Pappu Pandey over phone who told him about some important work and when he came near his old house, Pappu and Rajesh Kumar Verma both of them on the point of pistol had made him to sit in the car, which was driven by Rajesh Kumar Verma. He further submits that at the time of confinement of the victim, there is no demand of ransom by this appellant and this appellant had allegedly followed the vehicle by motorcycle. He further submits that the appellant was on bail during trial and never misused the liberty granted to him, therefore, the appellant may be released on bail.

9. Mr. Nilesh Kumar, learned counsel for the informant vehemently opposes the prayer for bail on the ground that as per the statement of P.W.7, victim, he was kidnapped from his old house and he was put in a vehicle by Pappu Pandey and Rajesh Kumar Verma and after some time near Redma over bridge this appellant Prakash Singh alias Prakash Kumar and others followed the vehicle by motorcycle and, therefore, it is not a fit case to admit the appellant on bail.

10. Learned Additional Public Prosecutor appearing for the State vehemently opposes the prayer for bail adopting the arguments of the learned counsel for the informant. He further added that at the relevant time the victim was juvenile. Therefore, it is not a fit case to admit the appellant on bail during the pendency of the instant appeal.

11. Having heard learned counsel for the parties and after going through the judgment of the trial Court and considering the evidence of P.Ws. 5, 7 and 11 (I.O.) the fact that he was on bail during trial and never misused the liberty granted to him, during the pendency of the instant appeal, the trial Court (Addl. Sessions Judge-IV, Palamau at Daltonganj) is directed to admit the present appellant, namely, Chhotu Pandey alias Himanshu Pandey alias Himansu Kumar Pandey, on bail on such terms and conditions, as he may deem fit and proper, in connection with Sessions Trial No. Sessions Trial No. 108 of 2015, subject to a further condition that he shall mark his attendance before the Daltonganj (Town) Police station once in a week. If he fails to appear in two consecutive weeks, it is open to the Officer-in-charge, Daltonganj (T) Police station to rearrest him and produce before the trial Court.

12. I.A. No. 5231 of 2016 stands disposed of.

I.A. No. 3813 of 2016 (In Cr.A. (D.B.) No. 539 of 2016).

13. Learned counsel for the appellant has filed an affidavit showing the status of pending or disposed of cases against the present appellant.

14. Office is directed to keep it on record.

15. Heard Mr. A.K. Kashyap, learned Sr. counsel appearing for the appellant, Mr. Vijay Kumar Gupta, learned Addl.P.P. appearing for State and also Mr. Nilesh

Kumar, learned counsel appearing for the informant, on the Interlocutory application bearing I.A. No. 3813 of 2016, wherein prayer has been made to enlarge the appellant, namely, Pappu Pandey alias Rakesh Kumar Pandey on bail, during the pendency of the instant appeal, after suspending the sentence.

16. Mr. A.K. Kashyap, learned Sr. counsel appearing for the appellant submits that taking into consideration all the materials available on record, the case is not coming under the purview of Section 364A of the Indian Penal Code, rather at best it can be a case under Section 363 of the Indian Penal Code, which is bailable in nature. Therefore, the appellant may be released on bail.

17. Mr. Nilesh Kumar, learned counsel for the informant vehemently opposes the prayer for bail on the ground that in the evidence P.W.7, victim, has specifically stated with regard to the role played by this appellant in the commission of kidnapping and as many as 9 cases are pending against the present appellant for trial, and, therefore, it is not a fit case to admit the appellant on bail.

18. Learned Additional Public Prosecutor appearing for the State vehemently opposes the prayer for bail by adopting the arguments of the learned counsel for the informant. He further added the ground that at the relevant time the victim was juvenile the present appellant is a history sheeter having at least 9 cases pending against him and the fact that this case is not coming under the purview of section 363 of the Indian Penal Code. Therefore, he submits that it is not a fit case to admit the appellant on bail during the pendency of the instant appeal.

19. Having heard learned counsel for the parties and after going through the judgment of the trial Court and considering the evidence of P.Ws. 5, 7 and 11 (I.O.) and keeping in view the specific role played by the appellant, this Court is not inclined to admit the present appellant Pappu Pandey alias Rakesh Kumar Pandey on bail.

20. I.A. No. 3813 of 2016 stands rejected.

I.A. No. 5345 of 2016 (In Cr.A. (D.B) No. 625 of 2016).

21. Heard Mr. Sheo Kumar Singh, learned counsel appearing for the appellant, Mr. Vijay Kumar Gupta, learned Addl. P.P. appearing for State and also Mr. Nilesh Kumar, learned counsel appearing for the informant, on the Interlocutory application bearing I.A. No. 5345 of 2016, wherein prayer has been made to enlarge the appellant, namely, Rajesh Kumar Verma alias Fantus on bail, during the pendency of the instant appeal, after suspending the sentence.

22. Mr. Sheo Kumar Singh, learned counsel appearing for the appellant submits that taking into consideration all the materials available on record, the case is not coming under the purview of Section 364A of the Indian Penal Code, rather at best it can be a case under Section 363 of the Indian Penal Code, which is bailable in nature. Therefore, the appellant may be released on bail.

23. Mr. Nilesh Kumar, learned counsel for the informant vehemently opposes the

prayer for bail on the ground that in the evidence P.W.7, victim, has specifically stated with regard to the role played by this appellant in the commission of kidnapping and several cases are pending against the present appellant for trial, and, therefore, it is not a fit case to admit the appellant on bail.

24. Learned Additional Public Prosecutor appearing for the State vehemently opposes the prayer for bail by adopting the arguments of the learned counsel for the informant. He further added the ground that at the relevant time; the victim was juvenile the present appellant is a history-sheeter having at least 3 cases pending against him and the fact that this case is not coming under the purview of section 363 of the Indian Penal Code. Therefore, it is not a fit case to admit the appellant on bail during the pendency of the instant appeal.

25. Having heard learned counsel for the parties and after going through the judgment of the trial Court and considering the evidence of P.Ws. 5, 7 and 11 (I.O.) and keeping in view the specific role played by the appellant, this Court is not inclined to admit the present appellant Rajesh Kumar Verma alias Fantus on bail.

26. I.A. No. 5345 of 2016 stands rejected.

I.A. No. 4302 of 2016 (In Cr.A.(D.B) No. 669 of 2016).

27. Heard Mr. Indrajit Sinha, learned counsel appearing for the appellant, Mr. Moti Gope, learned Addl. P.P. appearing for State and also Mr. Nilesh Kumar, learned counsel appearing for the informant, on the Interlocutory application bearing I.A. No. 4302 of 2016, wherein prayer has been made to enlarge the appellant, namely, Arvind Pandey on bail, during the pendency of the instant appeal, after suspending the sentence.

28. Mr. Indrajit Sinha, learned counsel appearing for the appellant has submitted that absolutely there is no material or evidence against this appellant to show that he had made any demand of ransom and there is no nexus of this appellant in kidnapping the victim with the main accused persons. He further submits that P.W.7 victim has stated in his evidence that he was called by Pappu Pandey over phone about some important work and when he came near his old house, Pappu and Rajesh Kumar Verma both of them on the point of pistol had made him to sit in the car, which was driven by Rajesh Kumar Verma. He further submits that at the time of confinement of the victim, there is no demand of ransom by this appellant and this appellant had only followed the vehicle by motorcycle. He further submits that the appellant was on bail during trial and never misused the liberty granted to him, therefore, the appellant may be released on bail.

29. Mr. Nilesh Kumar, learned counsel for the informant vehemently opposes the prayer for bail on the ground that as per the statement of P.W.7, victim, he was kidnapped from his old house and he was put in a vehicle by Pappu Pandey and Rajesh Kumar Verma. Therefore, the petitioner was taken to Aurangabad (Bihar) and he was kept in their house, where it has been alleged that this appellant was

providing food of the victim. On this ground it is prayed that it is not a fit case to admit the appellant on bail.

30. Learned Additional Public Prosecutor appearing for the State vehemently opposes the prayer for bail adopting the arguments of the learned counsel for the informant. He further added the ground that at the relevant time the victim was juvenile. Therefore, it is not a fit case to admit the appellant on bail during the pendency of the instant appeal. He admits that this appellant was on bail during trial.

31. Having heard learned counsel for the parties and after going through the judgment of the trial Court and considering the evidence of P.Ws. 5, 7 and 11 (I.O.) and the fact that he was on bail during trial and never misused the liberty granted to him, during the pendency of the instant appeal, the trial Court (Addl. Sessions Judge-IV, Palamau at Daltonganj) is directed to admit the present appellant, namely, Chhotu Pandey alias Himanshu Pandey alias Himansu Kumar Pandey, on bail on such terms and conditions, as he may deem fit and proper, in connection with Sessions Trial No. Sessions Trial No. 108 of 2015, subject to the condition that he shall mark his attendance before the Kutumba Police station, district Aurangabad (Bihar), once in a week. If he fails to appear in two consecutive weeks, it is open to the Officer-in-charge, Kutumba Police station to rearrest him and produce before the trial Court.

32. I.A. No. 4302 of 2016 stands disposed of.