

(2019) 07 PAT CK 0148

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 777, 783 Of 2019

Duryodhan Tanti

APPELLANT

Vs

Union Of India Through C.B.I. And Ors

RESPONDENT

Date of Decision : 08-07-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 31, 427
Constitution Of India, 1950 — Article 226

Citation : (2019) 07 PAT CK 0148

Hon'ble Judges : Amreshwar Pratap Sahi, CJ;Anjana Mishra, J

Bench : Single Bench

Advocate : Sanjay Kumar, Bipin Kumar Sinha, Prabhu Narayan Sharma

Final Decision : Dismissed

Judgement

These two petitions in the nature of habeas corpus have been filed contending that the petitioner has been unlawfully detained in spite of the fact that he has already served out sentences in two matters in which he was convicted, namely Special Case No. 55 of 2011 and Special Case No. 56 of 2011 in which the judgment was delivered on 20th of July, 2017 simultaneously.

It is further submitted that he was convicted in a third case, namely Special Case No. 54 of 2011 long before on 15.11.2016, in which an appeal has been filed before the High Court wherein he is on bail with effect from 01.12.2018.

The contention, therefore, is that the petitioner being on bail in Special Case No. 54 of 2011 and having served out the sentences which are to run concurrently in the other two cases, namely Special Case No. 55 of 2011 and Special Case No. 56 of 2011, the petitioner's detention is henceforth unlawful.

The provisions of Section 31 and Section 427 have been cited in support of the contentions which has been opposed by the learned counsel for the State by bringing to the notice of the Court the judgments in the cases of M.R. Kudva Vs. State of Andhra Pradesh, reported in (2007) 2 SCC 772, paragraph -12, Mohd.

Akhtar Hussain @ Ibrahim Ahamed Bhatti Vs. Assistant Collector of Customs (Prevention), Ahmadabad & Another, reported in (1988) 4 SCC 183, paragraph 17 and 18, Muthuramalingam & Ors. Vs. State Represented by Inspector of Police, reported in (2016) 8 SCC 313, paragraph 20 to 23, Benson Vs. State of Kerala, reported in (2016) 10 SCC 307, paragraph 5, 6 and 7, Neera Yadav Vs. Central Bureau of Investigation, reported in (2017) 8 SCC 757, paragraph 69 and Jitendra Vs. State Government of NCT of Delhi reported in A.I.R. 2018 SC 5253. On the strength of the ratio of the aforesaid decisions, learned counsel for the State and learned counsel for the C.B.I. have urged that on a plain reading of the provisions of 31 and 427 Cr.P.C., it is evident that in the instance case, two judgments have been pronounced simultaneously on the same date i.e., on 20th July, 2017 in two separate trials. It is urged that the judgments award sentences separately in both the cases separately and, therefore, they are to run consecutively and not concurrently.

Learned counsel for the petitioner has, however, submitted that the Court in both the judgments has used the words 'sentences are to run concurrently' and, therefore, it should be construed to mean that the sentences, even though awarded separately in two cases, they should run concurrently and the period having been served out by the petitioner and the fine having been deposited, he is entitled to be released forthwith.

Learned counsel for the State has urged that even assuming for the sake of arguments that this position may have emerged, yet this relief cannot be granted in exercise of jurisdiction under Article 226 of the Constitution of India where there is clear provision under paragraph 444 of the Bihar Prison Manual, 2012 that in case of doubt as to whether the sentences can take effect in one manner or the other the instructions of the Court imposing the sentences shall be taken.

We have considered the submissions raised. The facts of this case are as clear as a window pane. There is no dispute that there were two Special Cases, namely Special Case No. 55 of 2011 and Special Case No. 56 of 2011 that were tried separately and separate sentences were awarded. We have perused both the judgments and we find that the Court has used the word 'concurrently' in both the judgments, but this is in respect of the sentences awarded separately in both the cases independent of each other. Thus, in Special Case No. 55 of 2011, the sentences awarded are to run concurrently, whereas in Special Case No. 56 of 2011, there is no such recital that the sentences awarded in both the cases will run concurrently. There is, therefore, no scope for any confusion or any doubt about the award of sentences on the strength of the arguments advanced by the learned counsel for the petitioner. The Court has categorically indicated separate sentences in both the separate trials even if the judgment has been pronounced on the same date. The pronouncement on the same date would not make any difference and would not allow us to construe in any manner that sentences in both the separate trials were to run together and concurrently. They have to run consecutively one after the other and consequently, any scope for accepting the

argument of unlawful detention is unwarranted. The petitions fail and are hereby dismissed.