

(2016) 03 PAT CK 0073

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 1066 of 2015 (Arising Out of PS.Case No. null Year null Thana -null District-Jehanabad).

Jawala Prasad Singh @ Jawala Singh and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 364, 365, 367

Citation : (2016) 2 ECrC 651

Hon'ble Judges : Ashwani Kumar Singh, J.

Bench : Single Bench

Advocate : Dinu Kumar, Rajesh Kumar Singh, Manoj Kumar and Santosh Kumar, Advocates, for the Appellant; Harish Kumar, G.P.-32, for the Respondent

Final Decision : Disposed off

Judgement

Ashwani Kumar Singh, J. (Oral) - By way of the present application preferred under Articles 226 and 227 of the Constitution of India, the petitioners seek quashing of the orders dated 10.7.2003 and 3.7.2015 by which non-bailable warrant of arrest and permanent warrant of arrest have been issued against the petitioners in Tr. No.1935 of 2015 arising out of Ghoshi P.S. Case No.27 of 1996.

2. It has been submitted by the Mr. Dinu Kumar, learned counsel for the petitioners, that during the pendency of the application the petitioners no. 1 and 6, namely, Jawala Prasad Singh @ Jawala Singh and Dharendra Kumar Dhiru @ Dhiru Singh have already been arrested. In that view of the matter, the application, so far as petitioners no.1 to 6 are concerned, is dismissed as infructuous.

3. It has been contended by the learned counsel for the petitioners that initially a complaint was filed in the court of Chief Judicial Magistrate, Jehanabad which was referred to the police under section 156(3) of the Code of Criminal Procedure (for short "Cr.P.C.") for investigation pursuant to which Ghoshi (Hulasganj) P.S.

Case No.27 of 1996 was instituted on 28.2.1996 for the offences punishable under sections 364, 365 and 367 of the Indian Penal Code against the petitioners and other accused persons. During investigation of the case, the petitioners were granted anticipatory bail by different orders passed by this court. In terms of the orders passed by this court the petitioners furnished their bail bonds before the learned Chief Judicial Magistrate, Jehanabad in May, 2000. Thereafter, on completion of investigation, the police submitted charge-sheet on 28.2.2001. Taking into consideration the police report submitted under section 173(2) Cr.P.C. and other materials available on record, the learned Chief Judicial Magistrate, Jehanabad took cognisance of the offences punishable under sections 364, 365 and 367 of the Indian Penal Code against the petitioners vide order dated 28.2.2001 and summoned them to face trial. Thereafter, the case was transferred to the court of another Judicial Magistrate, 1st Class, Jehanabad vide order dated 23.9.2001. The learned Judicial Magistrate, Jehanabad issued bailable warrant of arrest, non-bailable warrant of arrest and permanent warrant of arrest against the petitioners vide orders dated 21.12.2001, 10.07.2003 and 03.07.2015 respectively in absence of any service report of summons issued against the petitioners.

4. It has been contended by the learned counsel for the petitioners that the petitioners were granted anticipatory bail prior to the submission of the charge-sheet and after submission of the charge-sheet neither summons nor bailable warrant of arrest nor non-bailable warrant of arrest was ever served upon the petitioners but the learned Magistrate has erroneously declared the petitioners absconder and issued permanent warrant of arrest against them vide order dated 3rd July, 2015. He has further contended that in absence of valid service report of summons, the issuance of warrant of arrest bailable or non-bailable or declaring the petitioners to be absconder, is not sustainable in the eye of law.

5. In reply to the query made by the court, learned counsel for the petitioners has submitted that the petitioners are ready to appear before the court on any date fixed by the court. He has further submitted that the petitioners are also willing to abide by any condition which the court would like to impose on the petitioners for allowing them to continue on bail.

6. Learned counsel for the State though opposed the application filed by the petitioners, he concedes that in case the petitioners appear before the court within a reasonable period of time and face the trial, the State would not insist for remanding them to judicial custody.

7. I have heard respective counsel for the parties and perused the materials available on record.

8. Regard being had to the submissions made at the Bar as also the facts and circumstances of the case, without entering into the controversy as to whether or not the summonses were ever served upon the petitioners, this court is of the view that there should be no further delay in concluding the trial.

9. In that view of the matter, the application is disposed of with a direction that in case the petitioners, namely, Jayram Sharma @ Jayram Singh, Sunil Kumar @ Sunil Singh, Bijay Sharma @ Bijay Singh and Sanjay Kumar @ Sanjay Singh surrender within two weeks from today before the jurisdictional Magistrate, he shall release them on bail on furnishing bail bond to his own satisfaction subject to the following conditions:-

(i) The petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such fact to the court;

(ii) The petitioners shall not do any act prejudicial to the interest of the prosecution;

(iii) The petitioners shall receive the police report and other documents in terms of Section 207 of the Code of Criminal Procedure as and when the same is supplied to them by the court;

(iv) One of the sureties must be a Government servant/ employee of the public sector undertakings/elected people's representative of Panchayat/Municipality; and the other shall be a close relative;

(v) The petitioners shall abide by the above conditions scrupulously and in case of violation of any of the conditions, the prosecution would be at liberty to move the court for cancellation of bail.