

(2005) 12 PAT CK 0001

In the Patna High Court

Case No : Criminal Miscellaneous No. 503 of 2005

Lal Singh @ Lal Babu @ Jay Prakash Narayan and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 05-12-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437(3)
Penal Code, 1860 (IPC) — Section 307, 323, 324, 448

Citation : (2006) 1 PLJR 649

Hon'ble Judges : M.L. Visa, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.L. Visa, J.—This application filed by petitioners for quashing that part of order dated 14.10.2004 and 1.12.2004 passed by 7th Additional Sessions Judge, Gaya, in Bail Petition Nos. 155 of 2004/1521 of 2004 and 179 of 2004/1783 of 2004 respectively putting some conditions while granting bail to the petitioners in Tekari P.S. Case No. 107 of 2004, with the consent of the parties was heard for final disposal when it was listed under the heading for admission and is being disposed of by this order. Brief facts of the case are that on the basis of Fardbeyan of Ashok Kumar, Tekari P.S. Case No. 107 of 2004 was instituted against the petitioners under sections 323, 324, 307 and 448 of the Indian Penal Code and 27 of Arms Act. In the fardbeyan it was alleged that on 23.8.2004 when the informant was getting his land cultivated the petitioners variously armed with rifles and guns came there and asked the informant why he was getting their land cultivated and when informant replied that he was getting his own land cultivated petitioners fired from their firearms causing injuries to informant and his cousin and thereafter petitioners fled away.

2. Petitioners prayed for bail before the Chief Judicial Magistrate, Gaya, but their prayer was rejected. Thereafter petitioners moved before the Sessions Court for their bail and 7th Additional Sessions Judge, Gaya, by the impugned orders

granted bail to the petitioners putting condition that they will not disturb the peaceful possession on P.O. of the informant and this undertaking must be filed before the lower court at the time of filing bail bonds. He further passed order that lower court would examine the fact if disclosed about the disobedience of the condition imposed upon the petitioners at the time of filing of bail bonds. Being aggrieved by this condition petitioners have preferred this application for setting aside the part of the impugned orders by which aforesaid condition has been imposed.

3. Learned counsel of petitioners has argued that while passing order on the prayer of bail of the petitioners the court below has presumed the possession of informant on the P.O. land and has passed order accordingly which is not according to law because the court was not required to pass any order on the point of possession of P.O. land by any party in a bail matter.

4. According to the provisions of Section 437(3) of the Code of Criminal Procedure, 1973 (in short, Cr. P.C.) while granting bail to a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of some other offence mentioned in this sub-section, the court may impose any condition which it considers necessary in order to ensure that such person shall attend in accordance with the conditions of the bonds executed under Chapter 23 of Cr. P.C. or in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, and otherwise in the interests of justice.

5. From perusal of fardbeyan (Annexure-1) it appears that petitioners inquired from informant why he was getting their lands cultivated. It suggests that petitioners were also claiming the land which according to the informant was being cultivated by him and which is claimed by informant. The condition which has been imposed by the court below on the petitioners while granting bail to them that they will not disturb the peaceful possession on the P.O. of the informant amounts to a finding by the court below that informant is in possession of the P.O. land. While hearing on the prayer of the petitioners for bail, the matter to decide title or possession of P.O. land was not under consideration before the court below and, therefore, any finding by the court below on the point of possession of P.O. land was unwarranted. In the present case, while finally deciding the case of prosecution the question of possession of P.O. land is one of the major issues which will have an important bearing on the result of the case because petitioners were also claiming P.O. land as their own. The condition imposed by the court below is not covered by Section 437 (3) Cr.P.C.

6. The 7th Additional Sessions Judge, Gaya has also directed the lower court to examine the facts if disclosed about the disobedience of the condition imposed upon the petitioners at the time of filing bail bonds. From the perusal of impugned orders I find that petitioner No. 1 Lal Babu was granted bail with the same condition and it was alleged that he after being released on bail violated

the condition imposed on him by forcibly irrigating the land of the informant. So far other petitioners are concerned there was no such allegation and this allegation could not have been levelled because at the time of passing of the impugned order dated 1.12.2004 no such condition on these petitioners was there and they had not given such an undertaking. Under such circumstances, it is not clear that how the Additional Sessions Judge, Gaya directed the court below to examine the facts of disobedience of condition imposed on these petitioners at the time of filing bail bonds because before filing bail bonds there was no question of any condition upon them.

7. In the result, this application is allowed and part of the impugned orders putting condition on the petitioners that they would not disturb the peaceful possession on the P.O. of informant and direction to the lower court to examine the facts if disclosed about the disobedience of condition imposed upon the petitioners at the time of filing bail bonds is hereby quashed. If by this time petitioners in compliance of the impugned orders have already filed bail bonds, the aforesaid condition would be deemed deleted in the bail bonds.