

(2004) 08 PAT CK 0111

In the Patna High Court

Case No : Criminal Miscellaneous No. 20901 of 2004

Matru Kumar Yadav @ Matar Yadav @ Mantu Kumar Yadav
and Another

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 20-08-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 109, 120B, 149, 302, 307

Citation : (2004) 4 PLJR 154

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Bindhya Keshri Kumar, Gopal Shankar, Shekhar Kumar Singh, Uday Chand Prasad, Radhey Shyam Gupta, Deo Narain Yadav and Dinesh Prasad Verma, for the Appellant; Parmeshwar Mehta for the State, for the Respondent

Judgement

Aftab Alam, J.—This court has recently adopted the practice of getting all bail petitions arising from the same case listed simultaneously before the same court. Previously bail petitions though arising from the same case used to be listed at random. As a result bail petitions of different accused persons in the same case would get listed at different times before different courts. Under the previous mode the court was likely to get only a partial view of the case as the matter would be presented in the context of a particular accused. Consequently, orders passed by different benches on bail petitions of different accused in the same case would some-times appear to be somewhat wanting in consistency; or an order in the case of a particular accused would appear to have been passed without taking into account all the relevant facts and circumstances of the case. This tended to happen more often in cases that may be called sensitive from a social angle or in case in which accused were in large numbers. The newly introduced system leaves little room for such errors. The bail petitions of all/several accused being before it at the same time the court is in a position to view the matter in the larger prospective and the chances of missing any relevant fact

or circumstance are thus, minimised. The new system does not allow any accused to down-play his role in the commission of the offence at the expense of other(s). The new system is particularly of great advantage in cases of planned crimes, such as, abduction for ransoms committed by organised and professional groups of criminals or cases of road hold-ups or looting of goods being transported by truck after killing its driver and Khalasi etc. The simultaneous hearing of bail petitions of a number of accused in the same case is also of great advantage in cases of caste and communal based carnages or massacres of innocent persons perpetrated by groups of extremists. In such cases it is quite obvious to me that the conventional parameters for grant of bail, such as "not named in the F.I.R.", "no specific allegation of any overt act" or the distinction between the order giver and the main assailant are hardly adequate. In a case of abduction for ransom the main person and the mastermind may operate from behind the scene. In a case of corruption in high public offices further names of accused are likely to come only in course of investigation. In a case of communal or caste based carnage the culpability of the order-giver, to my mind, is more and not less than the accused who actually fired the shots. In such cases the provisions dealing with vicarious liability as contained for example under sections 34, 109, 120B and 149 of the Penal Code need to be enforced with far greater stringency even for the purpose of bail.

2. This long prelude became necessary because counsel for the petitioners in this batch of bail petitions laid great stress on the fact that some other accused in this case were granted bail by different benches. In my view it is one of the cases in which the prayer for bail by the accused must be considered in the larger perspective and it will not be appropriate to apply to this case the conventional formulae of there being no specific allegation of any overt act against the accused or the distinction between the order-giver and the actual assailant.

3. There are fourteen petitioners before this court in this catch of eight bail petitions arising from Murliganj PS case No. 30 of 2004.

4. On 13.3.2004 one Ankit Jha, son of Beer Narain Jha was playing with his friends. The cricket ball they were playing with accidentally went into the house of Suresh Yadav. The boy went to retrieve the ball but instead of getting back the ball he got beaten up by Suresh Yadav and some other inmates of the house. On this his father Beer Narain Jha went to protest to the house of Suresh Yadav. An altercation took place following which Beer Narain Jha was severely assaulted by a number of persons. In regard to that episode Murliganj PS Case No. 28 of 2004 was instituted in which a number of persons were named as accused. The case was initially instituted u/s 307 of the Penal Code. Beer Narain Jha was taken for treatment to Madhepura and from there to Purnea and from there to Siliguri. On way to Siliguri he died. Following his death section 302 of the Penal Code was also introduced in that case.

5. On the following day when his brother Dhirendra Narain Jha was going around

for arrangement of money for the treatment of his brother Beer Narain Jha, he was lifted up in the village and was taken to a nearby Bansbari. There he was assaulted mercilessly and both his arms and thighs were practically crushed by lathi blows. On hulla raised by him his wife and some witnesses arrived there. Eventually a police party also came and the assailants ran away. He was taken to Murliganj hospital where his fard-e-bayan was recorded at 9.30 AM on 14.3.2004. On the basis of the fard-e-bayan an F.I.R. was instituted giving rise to Murliganj PS Case No. 30 of 2004. Dharendra Narain Jha also died on the next day and the case that was initially instituted u/s 307 was converted into one u/s 302 of the Penal Code. In this case the statements of six witnesses, including his wife and two sons were recorded u/s 164 of the Cr. P.C.

6. All the fourteen petitioners are accused in Murliganj PS Case No. 30 of 2004 and they are now before this court praying for bail in that case. With the exception of Chandra Kishore Yadav, the sole petitioner in Cr. Misc. No. 23249 of 2004, all the thirteen petitioners are named in the fard-ebayan of the victim Dharendra Narain Jha which after his death is to be seen as his dying declaration.

7. Different counsel appearing on behalf of the petitioners in this batch of eight petitions made their respective submissions to suit their respective clients. It was, however, uniformly submitted on behalf of all the petitioners that in the first information report there was simply a general and omnibus allegation against all the accused and there was no allegation of any specific act(s) against any of the petitioners.

8. Mr. Bindhya Keshri Kumar, Senior Advocate appearing in Cr. Misc. No. 20901 of 2004, Mr. Shekhar Kumar Singh appearing in Cr. Misc. No. 21480 of 2004 and Mr. Gopal Shankar appearing in Cr. Misc. No. 21657 of 2004 also submitted before the court that four other accused who were also named in the F.I.R., namely, Balo Yadav alias Baldeo, Mithilesh Yadav, Nand Kishore Yadav and Nilo Yadav were granted bail by other Hon"ble Judges of this court.

9. It was strenuously argued that the victim Dharendra Narain Jha had received many grievous and painful injuries and in all likelihood he was in an unconscious state when he was taken to the Hospital. It was, therefore, impossible for him to make any statement giving the names of 27 persons as his assailants. It was suggested that the fard-e-bayan was a fake statement and, therefore, no reliance should be placed on it even though it might be presented as the dying declaration of the victim.

10. From the facts and circumstances narrated above, it appears to me that it is not a case where one individual or one group of persons attacks another individual or group of persons for some land dispute or for some other material or personal considerations. This case clearly presents some features of a caste conflict in the village and it appears that though the genesis lay in the trivial incident of a ball landing in the house of another person, it erupted a violence that lasted for two days and took the lives of two persons. Therefore, to my

mind, this case even for the purpose of bail cannot be judged on the basis of the cliches like there being no allegation of any overt specific act, etc.

11. It is noted above that the murder of Beer Narain Jha on 13.3.2004 and the killing of Dhirendra Narain Jha on the following day, 14.3.2004 gave rise to separate cases being Murliganj P.S. Case Nos. 28 and 30 of 2004. In this case there is the further material in the form of 164 Cr. P.C. statements of six witnesses. For the purpose of bail, therefore, I have adopted the principle that bail may be granted to those accused who are named in the F.I.R. of this case alone. Those accused who, apart from being named in the F.I.R. of this case are also named as accused in the FIR of the previous case or in the statements of any of the witnesses u/s 164 Cr. P.C, to my mind are not entitled to bail, atleast at this stage.

12. On this criterion, Matru Kumar Yadav @ Matru Yadav @ Mantu Kumar Yadav, petitioner no. 1 in Cr. Misc. No. 20901 of 2004, Shyam Sundar Prasad Yadav @ Shyam Sundar Yadav, petitioner in Cr. Misc. No. 21742 of 2004, Subhas Yadav @ Subhas Chandra Yadav and Sanjeev Kumar Yadav, the two petitioners in Cr. Misc. No. 22003 of 2004 are found entitled to bail.

13. Chandra Kishore Yadav, the sole petitioner in Cr. Misc. No. 23249 of 2004 though named by witness nos. 1 and 6 in their statements u/s 164 Cr. P.C. is not named in the F.I.R. itself. He too is, therefore, held to be entitled to bail.

14. Apart from the aforesaid there is Raj Kishore Yadav, petitioner in Cr. Misc. No. 22723 of 2004. He is named in the F.I.R. He is also named in the 164 Cr. P.C. statement of the wife of the deceased. But it may be noted that witness no. 1 has named the accused in two categories. In the first category she names those who were assaulting her husband and in the second category she names those who were present there. The name of Raj Kishore Yadav figures in the second category. He too, therefore, is held entitled to bail.

15. Then, there is Sadanand Yadav, petitioner no. 2 in Cr. Misc. No. 21480 of 2004. He is named in the F.I.R. He is not named by any of the six witnesses but witness no. 1 in her 164 Cr. P.C. statement refers to the two sons of Sukhdeo Yadav (another accused in the case). Sukhdeo Yadav is reported to have five sons and, therefore, the reference to the two sons may not necessarily fix the identity of this petitioner. He too is, therefore, held entitled to bail.

16. The rest of the petitioners, namely, Saral Yadav (petitioner no 2 in Cr. Misc. No. 20901 of 2004), Sukhdeo Yadav and Salendra Yadav (petitioners 1 and 3 respectively in Cr. Misc. No. 21480 of 2004), Sachin Yadav alias Sachin Yadav, Rajiv Yadav and Sanjhi Yadav @ Sanjay Yadav, the three petitioners in Cr. Misc. No. 21857 of 2004 and Nunu Yadav @ Indradeo Yadav, the sole petitioner in Cr. Misc. No. 22873 of 2004 apart from being named in the F.I.R. are also named by one or more witnesses in the 164 Cr.P.C. statements. Sachin Yadav, Rajeev Yadav and Sanjhi alias Sanjay in particular are also the named accused in Murliganj PS case No. 28 of 2004 though in that case they are said to have been

granted bail.

17. The prayer for bail on behalf of petitioners 1. Saral Yadav alias Sarlu Yadav, 2. Sukhdeo Yadav, 3. Salendra Yadav alias Salen Yadav alias Saleen Yadav, 4. Sachen Yadav alias Sachin Yadav, 5 Rajeew Yadav, 6. Sanjhi Yadav alias Sanjay Yadav and 7. Nunu Yadav alias Indradeo Yadav is rejected at this stage.

18. The rest of the petitioners, namely, 1. Matru Kumar Yadav @ Matru Yadav alias Matar Yadav @ Mantu Kumar Yadav, 2. Shyam Sundar Prasad Yadav @ Shyam Sundar Yadav, 3, Subhash Yadav @ Subhashchandra Yadav, 4. Sanjeev Kumar Yadav, 5. Chandra Kishore Yadav, 6. Raj Kishore Yadav and 7. Sadanand Yadav @ Sadanand Kumar are directed to be released on bail in Murliganj P.S. Case No. 30 of 2004 on furnishing bail bonds of rupees ten thousand each with two sureties of the like amount each to the satisfaction of the C.J.M., Madhepura. Before parting with the records of the case, I would like to put on record my appreciation of Mr. Parmeshwar Mehta, A.P.P. who painstakingly prepared a chart in respect of all the petitioners indicating the materials in respect to each of them. The chart prepared by him proved to be very helpful to the court.