

(2002) 03 CHH CK 0001
In the Chhattisgarh High Court
Case No : Writ Petition No. 738 of 2001

Sobran Singh

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 330

Citation : (2002) 3 CGLJ 223 : (2002) 2 MPHT 32

Hon'ble Judges : Fakhruddin, J

Bench : Division Bench

Advocate : Mukesh Sharma, for the Appellant; N.K. Shukla, A.A.G., for the Respondent

Judgement

Fakhruddin, J.—Heard.

2. By this writ petition filed under Article 227 of the Constitution of India, petitioner prays for quashing of the impugned order dated 5-1-2001 passed by the VII Additional Sessions Judge, Raipur in S.T. No, 418/2000 (State v. Laxmi Bai and Ors).

3. This petition has been filed by the father-cum-natural guardian of petitioner. It is stated in the petition that the petitioner is mentally retarded and at the instance of the co-accused one Smt. Lakshmi Bai who is said to be guardian of Ms. Santoshi Bai, the marriage was solemnized between the petitioner and Santoshi Bai according to the customs. The allegation against the petitioner is that he has kidnapped Santoshi Bai (wife). The petitioner has been taken into custody and he is said to be in jail since 15-9-2000.

4. As directed, report of the Medical Officer Central Jail Hospital has been received which shows that the petitioner was admitted in Hospital since 3-1-2002 and during this period the conduct of the accused has been observed.

5. Earlier, the Station House Officer, Khamtarai, has sought medical report of

petitioner Sobran and the Dr. Sunil Gupta, has opined that mental maturity is not found and the petitioner was advised Psychiatric examination.

6. Now, Dr. Shukla, learned Addl. Advocate General for the State submits that the petitioner is mentally retarded as per report received.

7. Section 330 of Cr.PC provides for release of a lunatic pending investigation or trial.

Section 330, Cr.PC reads as under:--

"330. Release of lunatic pending investigation or trial.-- (1) Whenever a person is found u/s 328 or Section 329, to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such Officer as the Magistrate or Court appoints in this behalf.

(2) If the case is one in which, in the opinion of the Magistrate or Court bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be shall order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the State Government:

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the State Government may have made under the Indian Lunacy Act, 1912 (4 of 1912)."

8. In view of the aforesaid discussion, the petitioner is directed to be released on furnishing security bond by father or guardian in sum of Rs. 5000/-that the petitioner shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance in terms of Section 330, Cr.PC. In case if the security is not furnished, then the petitioner shall be detained in safe custody as deemed fit by the Sessions Court.

9. So far as stay of proceedings pending before the Court below is concerned, that shall be considered after release of the petitioner.