

(2016) 09 PAT CK 0016

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 550 of 2016

Suresh Kora

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 20-09-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, Section 148, Section 149, Section 302, Section 307, Section 332, Section 333, Section 353
Unlawful Activities (Prevention) Act, 1967 — Section 16, Section 18, Section 19, Section 20, Section 23

Citation : (2016) 3 BBCJ 491 : (2016) 4 BLJud 337 : (2017) 1 ECRC 151 : (2017) 1 PLJR 96

Hon'ble Judges : Mr. Hemant Gupta, J.

Bench : Single Bench

Advocate : Mr. Mukesh Kumar, Advocate, for the Petitioner; Mr. R.B. Prasad Yadav, A.A.G.-11 Mr. Jitendra Kumar, A.C. to A.A.G.-11 Mr. Dinesh Maharaj, A.C. to A.A.G.-11, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Hemant Gupta, J. - The petitioner is an accused in Piri Bazaar P. S. Case No.04 of 2016 registered for the offences punishable under Sections 147, 148, 149, 332, 333, 353, 307, 302 of the Indian Penal Code as well as Sections 16, 18, 19, 20, 23 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as "the Act").

2. The allegation against the petitioner in the FIR is that on 30th of January, 2016, information was given by the informant Navin Kumar that at Lathia Kol Hill, the dreaded terrorist Arjun Koda and Arbind Koda along with 20-25 armed persons have assembled. They are planning to attack the policy party. In a combing operation, the informant reached the hiding places at around 12 at Noon starting at 7 A.M.. They saw one person, who ran after seeing the police party. He was apprehended and was in the process of investigation when alarm was raised in the Lathiakol village. In the meantime, a crowd of hundreds of

people along with bow and arrow, axe, Lathi etc. started coming towards the police. Children and women were placed in front and thereafter there were Naxalites armed with weapons, who were raising slogans. Such crowd attacked the police party. The said crowd was successful in getting free Lalan Koda. Arjun Koda, Arbind Yadav, Suresh Koda and other Naxalites started firing on the police with intent to kill and take the arms. One Bhawesh Kumar got a bullet injury and fell down. On firing being ordered, the crowd and the Naxalites went towards forest. The injured was taken to the hospital where he was declared dead.

3. The petitioner was taken in judicial custody on 1st of February, 2016. He sought compulsive bail in terms of Section 167(2) of the Code of Criminal Procedure on 10th of May, 2016 on the ground that the charge-sheet has not been put up before the Court within 90 days. The learned Trial Court passed an order on the same day at 11.50 A.M. allowing the bail to the petitioner but at 12:30 P.M. before the petitioner could be released, an application was filed by the Investigating Officer for extension of time to submit charge-sheet in terms of the provisions of the Act which grants 180 days time for submission of the charge-sheet if sufficient cause is shown to the Court. It is on the said application, the Court passed an order granting 15 days more time to the Investigating Officer to file charge-sheet. Admittedly, the charge-sheet has since been filed within the time so granted.

4. Learned counsel for the petitioner relies upon Supreme Court order in the case of Union of India through C.B.I. v. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav, (2014) 9 SCC 457, to contend that once the petitioner has filed an application for bail and admittedly the charge-sheet was not filed at that time, the petitioner is entitled to compulsive bail in view of the said judgment.

5. I have heard learned counsel for the parties and find that the said judgment is not applicable to the facts of the present case as on the same day when the bail was applied, the learned Trial Court granted 15 days" time to file charge-sheet. The act of bail and of extension of time both have taken place on the same day.

6. In Nirala Yadav's case (supra) it has been held that right of the bail has to be seen on the day when the application for bail is filed. The Court said to following effect:

" 47. ??????.In the instant case, the day the accused filed the application for benefit of the default provision as engrafted under proviso to sub-section (2) of Section 167 CrPC the Court required the accused to file a rejoinder-affidavit by the time the initial period provided under the statute had expired. There was no question of any contest as if the application for extension had been filed prior to the expiry of time. The adjournment by the learned Magistrate was misconceived. He was obliged on that day to deal with the application filed by the accused as required under Section 167(2) CrPC. We have no hesitation in saying that such procrastination frustrates the legislative mandate. A court cannot act to extinguish the right of an accused if the law so confers on him. Law has to

prevail. The prosecution cannot avail such subterfuges to frustrate or destroy the legal right of the accused. Such an act is not permissible. If we permit ourselves to say so, the prosecution exhibited sheer negligence in not filing the application within the time which it was entitled to do so in law but made all adroit attempts to redeem the cause by its conduct."

7. A further perusal of the reported judgment would show that the accused was sent to the judicial custody on 05.12.2006 and on 14th of March, 2007, an application for release of bail under Section 167(2) Cr. P.C. was filed. It was on 15th of March, 2007, i.e. on the next day, an application was filed for extension of time by the Investigation Officer. In Nirala Yadav's case, the Court interfered as the application for extension of time was filed after the right for compulsive bail accrued to the petitioner. In the present case, though the application for compulsive bail was filed prior in time, but it was on the same day, the Investigating Officer sought extension in time and the extension in time was granted on the same day. Therefore, the rigor of law laid down in Nirala Yadav's case (supra) cannot be extended to the facts of the present case.

8. Similar issue has been examined by this Court in Cr.W.J.C. No.79 of 2016 (Upendra Yadav @ Munshi Yadav alias Munshi Yadav v. The State of Bihar) decided on 02nd March, 2016, wherein this Court has held to the following effect:

"8. In the present case, the Magistrate has decided the application on the same day, but after obtaining the report from G.R. Clerk. This was no attempt to frustrate the right of the petitioner to be released on bail, but to verify whether the petitioner has completed 90 days; and that whether the charge-sheet has been filed or not. Since the charge-sheet has been filed on the same day on which date the application for "compulsive bail" was filed, the judgment in Nirala Yadav case (supra) will not be applicable to the facts of the present case as in the aforesaid case, there was a request by the investigating agency for extension of time for filing of the charge-sheet. In the present case, no time sought for filing of the charge-sheet. The charge-sheet was filed on the same day though after the application for bail was filed."

9. In view of the above, I do not find any error in the order passed by the learned Trial Court and to allow the application of the petitioner for compulsive bail.

10. The writ petition stands dismissed.