

Pawan Kumar Vs. The State of Jharkhand

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Court : Jharkhand

Decided On : Apr-20-2017

Appellant : Pawan Kumar

Respondent : The State of Jharkhand

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Appeal (S.J.) No. 33 of 2017 Pawan Kumar Vs ... State of Jharkhand with Cr. Appeal (S.J.) No.115 of 2017 Ashok Prasad... Vs. ... State of Jharkhand with Cr. Appeal (S.J.) No.127 of 2017 Ritesh Kumar Vs State of Jharkhand with Cr. Appeal (S.J.) No.154 of 2017 Pankaj Kumar Tiwary.... Vs ... State of Jharkhand ----- CORAM: HON'BLE MR. JUSTICE ANANT BIJAY SINGH ----- For the Appellants : M/s. R.S.Mazumdar,A.K.Kashyap, Sr.Advocate, JaiShanker Tiwari and Naveen Kr. Jaiswal, Advocates For the State : Addl. A.G. For the Informant : M/s V.K. Rai & Faisal Khan ----- Reserved on :

13. 04..2017 Delivered on 20/04/2017 ----- Anant Bijay Singh, J Since all the four Anticipatory Bail Applications have been filed under section 14A of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act and the same arose from the same F.I.R. in connection with Bundu P.S. Case no.43 of 2016 corresponding to G.R. No.3944 of 2016, registered under section302/34 I.P.C., section of S.C & S.T. (Prevention of Atrocities)Act and section 23 of the Juvenile Justice Act, 2000,they are being heard together and disposed of by this common order.

2. Cr. Appeal No.33 of 2017 has been filed on behalf of appellant namely, Pawan Kumar being aggrieved and dissatisfied by the order 09.12.2016 passed by A.J.C.-I, Ranchi in A.B.P. No. 1559 of 2016,whereby and whereunder the learned court below has dismissed the prayer for anticipatory bail of the appellant.

3. Cr. Appeal No.115 of 2017 has been filed on behalf of appellant namely, Ashok Prasad being aggrieved and dissatisfied by the order 09.12.2016 passed by A.J.C.-I, Ranchi in A.B.P.No. 1685 of 2016,whereby and whereunder the learned court below has dismissed the prayer for anticipatory bail of the appellant.

4. Cr. Appeal No.127 of 2017 has been filed on behalf of appellant namely, Ritesh Kumar, being aggrieved and dissatisfied by the order 09.12.2016 passed by A.J.C.-I, Ranchi in A.B.P. No. 1582 of 2016,whereby 2 and whereunder the learned court below has dismissed the prayer for anticipatory bail of the appellant.

5. Cr. Appeal No.154 of 2017 has been filed on behalf of appellant namely, Pankaj Kumar Tiwary, being aggrieved and dissatisfied by the order 09.12.2016 passed by A.J.C.-I, Ranchi in A.B.P. No. 1687 of 2016, whereby and whereunder the learned court below has dismissed the prayer for anticipatory bail of the appellant.

6. The case of prosecution in short is that one Bhushan Swanshi gave a written report to the office incharge Bariyatu P.S. Ranchi alleging that his son Rupesh Swanshi aged about 16 years was working as Salesman in the shop namely, Nikhil Dresses near Kali Mandir for the last two months. It is alleged that on 07.07.2016 at about 5 P.M. some owner of the shops came alongwith the cycle of his son and informed him that two police personnel in civil dress came at the shop where Rupesh was working and they have taken away Rupesh Swanshi with them for interrogation. Thereafter, he went to Bundu P.S. and on query the I/C Bundu P.S. told him that his brother and son are good and they will be released in the night. It is further alleged that at 7:30 P.M. On the same day some police personnel brought his son to his house but he noticed that the mouth of his son was swelling and there was several injuries on different parts of his body. The informant tried to talk his son but the police personnel intervened and pressed the neck and mouth of Rupesh Swanshi and also started brutally assaulting him by rifle and called him by his caste name and picked him from his house. The

informant further alleged that he immediately moved to the Dy. S.P. Bundu, who disclosed that for some interrogation his son has been taken and in the morning after filing bond his son will be released. In the next morning when he alongwith other villagers went to office of Dy. S.P. Bundu, he was informed that his brother and son are admitted in R.I.M.S. Ranchi. at 11:30 A.M. when he reached R.I.M.S. Ranchi, he found his son died. On the basis of the aforesaid information the instant case was instituted.

7. Learned counsels appearing for the appellant- Pawan Kumar (in Cr. Appeal No.33 of 2017) has submitted that admittedly, appellant is not named in the FIR and the FIR was lodged against unknown accused persons. It is further submitted that at the relevant time, the appellant was posted as S.D.P.O. Bundu. It was further submitted that on the intervening day there was a meeting in the office of the appellant from 6 p.m to 9.15 p.m in which all the Officer-in-Charge of the Bundu Sub-division were present and after 3 meeting, this appellant came to know that two boys were brought for investigation. It is further submitted that Dasham Fall Police Station was inaugurated on 03.07.2016 and no police constable was deputed there. It is further submitted that there was an encounter between the petitioner and naxalite on 18.02.2017 in the then Bundu Police Station, now under the Dasham Police Station and thereafter he had deputed his bodyguard namely, Ritesh Kumar to Dasham Fall Police Station, as there was no constables posted there. It is further submitted that not a single witnesses have supported the case of the prosecution. On the basis of that allegation, it was simply submitted that the appellant, who was posted at Dasham Police Station has been falsely implicated in this case and no case under section 302/34 of the I.P.C. is made out against the appellant. The appellant had no knowledge that the deceased was the member of Schedule Tribe or not ? 8. A Supplementary Affidavit dated 20.02.2017 has been filed on behalf of the appellant pursuant to order dated 07.02.2017, wherein it was submitted that the appellant was transferred to Headquarter on 14.07.2016 and was asked to join in the Headquarter w.e.f. 14.07.2016 and thereafter he was deputed in Shravani Mela, 2016 at Deoghar by order dated 15.07.2016 after joining his duty at Deoghar, he remained there till 25.08.2016 and thereafter joined at headquarter at Ranchi. From perusal of the aforesaid affidavit, it appears that as per order of D.I.G. C.I.D, the S.P. (Rural) has issued letter to Sri B.N. Singh for

investigation of the said captioned case on 15.07.2010.

9. Learned counsel appearing in Cr. Appeal No.115 of 2017 filed on behalf of appellant- Ashok Prasad has submitted that at the relevant time this appellant was posted Rahe Police Station and he has been falsely implicated in this case simply because he had co-operated the police team during search on the disclosure of the deceased.

10. Learned counsel appearing in Cr. Appeal No.127 of 2017 filed on behalf of appellant- Ritesh Kumar has submitted that the appellant is a constable and at the relevant time he was posted as Body-guard of the Dy.S.P. Bundu, namely, Pawan Kumar (appellant in Cr. Appeal No. 33 of 2017) and he had acted upon as per the order given by the Officer-in-Charge, Dasham Fall Police Station, because he was also a member of investigating team. It was further submitted that appellant was not named in the F.I.R and has been falsely implicated in this case. Hence, he deserves to be enlarged on bail. 4 11. Learned counsel appearing in Cr. Appeal No.154 of 2017 filed on behalf of appellant- Pankaj Kumar Tiwary has submitted at the relevant time this appellant was posted as Officer-in-Charge of Dasham Falls Police Station and in course of his routine vehicle checkup on 06.07.2016 he had found that two persons were moving on motorcycle without having valid documents of ownership. But on the assurance given by one person namely Nitesh Raj Burman @ Kittu that he produce the paper in the next morning, they were allowed to go but his motorcycle was kept in the police station. It was further submitted that save and except the aforesaid fact, the petitioner has nothing to do with the aforesaid witnesses or with the deceased. Hence, he deserves to be enlarged on bail.

12. Learned Addl. P.P while opposing the prayer for bail of the appellants has submitted that the statement witness namely , Nitesh Raj Burman @ Kittu has been recorded under section 164 Cr.P.C on 29.08.2016, who has stated that on 06.07.2016 he alongwith his friend namely, Rahul had gone Dhurwa Sector-II, to seek Jagarnathpur Mela. When they were returning at 9.30 p.m the tyre of his motorcycle was punctured near Dasham Falls Police Station then during checking police asked them for papers of the vehicle but when they could not produce the

same on the plea that the said vehicle belongs to his friend Bablu, police seized his motorcycle and dropped them to their house by a vegetable van and both of them went to their house. In the morning when he went to the house of Bablu, he said that the papers are in Ranchi and thereafter he went to his shop. In the evening at about 6-6.15 P.M two police personnel in civil dress took him to the house of Dy.S.P namely, Pawan Kumar, where he noticed that large number of police personnels were present there and a meeting was going on. In the meanwhile, Chhotu @ Rupesh, who was working in a cloth shop besides my shop was also brought and the meeting was continue for some time. Thereafter, all the police personnels and one Umesh Chourasia, press reporter alongwith the Dy.S.P. came out and they disclosed that they are involved in different types of illegal acts. The Dy.S.P. again went inside the house to attend one phone call and in the meanwhile the body-guard of the Dy.S.P. started interrogation from Rupesh about gun and Rupesh stated that the gun is lying in his house and he was taken to his house. Further Dy.S.P. Came and asked his body-guard to give good to us. After giving food, the body-guard again started some query about the gun, then Rupesh told that the Gun is in a house at Rahe but the same could not be recovered from 5 there. Thereafter, they returned back Rahe Police Station and he alongwith Rupesh stayed at same room. After some time, they again came back and took up Rupesh some where else, when Rupesh returned, there were injuries on the body of Rupesh but on query Rupesh told that the police has not tortured him rather he fell down during fleeing from police custody and got himself wounded.

13. Further the statement of one Sushmita Kumari, was recorded on 26.08.2016 by the Judicial Magistrate, who is sister of deceased Rupesh Swanshi. She has categorically stated that on the direction of the Dy.S.P namely, Pawan Kumar (appellant in Cr.Appeal No.33 of 2017), the Officer-in- Charge, Bundu Police Station, Officer-in-Charge, Rahe Police Station, Officer-in-Charge, Dasham Police Station and the body-guard of Dy. S.P. Pawan Kumar interrogation was done from Rupesh Swanshi (Deceased). She has further stated that she alongwith her father, mother and sister rushed from Bundu P.S to Rahe P.S. and also the office of the Dy.S.P. Pawan Kumar in search of his brother but they could meet with Rupesh. Lastly they were informed by the Dy.S.P. Pawan Kumar and Officer-in-Charge, Bundu Police Station that her brother Rupesh has been admitted in R.I.M.S.

Ranchi, for treatment. When she alongwith her family members reached to R.I.M.S. Ranchi, there she saw the dead-body of her brother Rupesh.

14. Further, the statement of one Anita Kumari, was recorded on 24.08.2016 by the Judicial Magistrate, who is sister of deceased Rupesh Swanshi.

15. Learned counsel appearing in Cr. Appeal No. 33 of 2017 filed on behalf of appellant- Pawan Kumar has submitted that none of the witnesses, who have been examined under section 164 Cr.P.C. have categorically alleged that this appellant has tortured the deceased.

16. On the other hand, learned counsel appearing for the informant while opposing the prayer for bail of the appellants has submitted that in view of section 18 of the S.C. & S.T. (Prevention of Atrocities) Act the Anticipatory bail application is not maintainable.

17. It appears that case diary was called for and from perusal of para- 59 of the case diary, it appears that the I.O. has recorded the statement of Pramila Devi who has supported the case of prosecution and she has stated the same thing under section 161 Cr.P.C. which was earlier stated under section 164 Cr.P.C. at para-16 of the case diary the statement of witness Anju Devi has been recorded, who is mother of Nitesh Raj Burman @ Kittu, 6 she has disclosed that two persons had come in civil dress and they have taken Rupesh Swanshi to the residence of Dy.S.P. Similar statement has been made by Suchita Devi at para-17 of the case diary. At para-23 of the case diary, the statement of Abhimanyu Mahto has been recorded and at para -24 the statement of Sona Dey has been recorded and they have stated that two persons had come in civil dress and they have taken Rupesh Swanshi. It is further stated that Rupesh Swanshi has no criminal antecedent.

18. In para-104 of the case diary, the I.O has mentioned the postmortem report of the deceased. From perusal of the postmortem report, it appears that the deceased had received altogether 16 injuries, which are as follows :

1. To numbers of superficial linear marks, one of 02cm and another of 01 cm length located on right side of forehead.

2. Linear abrasion ,05 in number, of which largest is 1.5 cm long are situated on left lower face. All these are not parallel to each other.
3. Abrasion of 02x01 cm is present on left pinna lateral part.
4. Lateral part of right conjunctive is reddish.
5. Multiple patchy abrasions 05 in number over the area of 05x03 cm located on the left upper frontal part of the chest.
6. Multiple patchy abrasions 05x02 cm is also located on left down part of chest.
7. Abrasion of 01x1/2 cm is located on dorsal part of left elbow with epidermal graze over the area of 08x06 cm around.
8. Parallel print marks of various sizes (length) are located on right shoulder and right elbow to arm on external part.
9. Patchy abrasions 04 in number are also present on middle of back both side of midline.
10. Old wide scar and size 02x02 cm is present on hells anus.
11. Abrasions of 03x2 cm is present on lateral part of left knee.
12. Abrasion of 02x02 cm is on lateral part of left ankle.
13. Contusion is present on fronto- lateral part of both legs.
14. Contusion is also present on upper back.
15. Scalp is contused mostly in frontal and occipital part.
16. Contusion with blood clot is present in left side of chest wall at Antis-lateral position near 5th rib. All the above noted injuries are ante mortem in nature. Injury no.01 & 02 wise caused by pointed or sharp edged object and rest all other injuries wise caused by hard and blunt object.

19. In para 163 of the case diary, the doctor who had conducted post-mortem of the deceased had opined that the deceased has suffered multiple external and internal injuries in the form of abrasion, contusion and superficial cut marks on head, face, chest, back, shoulder, knee and ankle. Further, the whole heart and piece of spleen was sent for histopathological examination and from perusal of the report of the said examination, it appears that section from right atrium shows waviness of fibers with interstitial oedema, section from right ventricle shows subpericardial hemorrhage. Section from left atrium shows no significant pathology, section from left ventricle shows interstitial oedema & hyaline changes, section from arch of aorta shows focal area of necrosis and section from spleen shows dilated & congested sinusoids.

20. Further, the doctor has opined that the case of death of the deceased-Rupesh Swanshi was due to multiple injuries as mentioned in the Post-mortem report and sub pericardial hemorrhage of right ventricle caused by hard and blunt objects/force pre-disposed on mildly diseased condition of the deceased, which is evident by enlarged spleen with dilated sinusoids and focal area of necrosis of arch of aorta.

21. Learned counsel for the appellants have submitted that no case under section 302 I.P.C is made out, because as per post-mortem report, the deceased had received altogether 16 injuries but the same were ante mortem in nature and deceased was suffering enlarged spleen with dilated sinusoids and focal area of necrosis of arch of aorta. Hence, appellants deserve to be enlarged on bail.

22. Learned Addl.A.G on the other hand has submitted that admittedly, at the time of death, the deceased was in the custody of the appellants and he died due to injuries received in the custody, so they do not deserve anticipatory bail.

23. After hearing the parties and also going through the records of the case and also taking into consideration the fact that so far acquisition of SC & ST (Prevention of Atrocities) Act 1989 and amended in 2015 is concerned, the direction was given and the matter is still being investigated. So taking into consideration that direction given by the superior authority I am of the considered opinion that under Section 18 of the SC & ST (Prevention of Atrocities) Act 1989,

the anticipatory bail is maintainable at this stage.

24. Further in view of the discussions made above and the material collected by the I.O till date and also the arguments advanced by the learned counsel appearing on behalf of appellant , namely, Pawan Kumar (in Cr. Ap- peal No.33 of 2017), who was posted as Dy.S.P., Bundu at the relevant time and being the Head of the sub-division had the legal obligation to protect the deceased but admittedly he has failed to discharge his duty leading death of 8 Rupesh Swanshi (deceased). I am not inclined the grant anticipatory bail to the appellant Pawan Kumar.

25. Accordingly, prayer for anticipatory bail of the appellant, namely, Pawan Kumar is rejected and the Cr. Appeal No. 33 of 2017 is hereby dis- missed.

26. However, the appellant namely, Pawan Kumar, if so advised, may sur- render in the court below within Four Weeks and pray for regular bail, which shall be considered by the court below in accordance with law and without being prejudiced by the observation made in this case.

27. So far, appellant, namely, Ashok Prasad (appellant in Cr. Appeal No.115 of 2017) and Pankaj Kumar Tiwary (appellant in Cr. Appeal No. 154/2017) are concerned, it appears that at the relevant time, they were posted as Officer-in-Charge in Rahe Police Station and Dasham Falls Police Station respectively and on the direction of his Superior Office, namely, Pawan Kumar, Dy.S.P., Bundu (appellant in Cr. Appeal No.33/2017) they were involved in the alleged offence.

28. In that view of the matter, the Cr. Appeal No. 115 of 2017 filed by the appellant,namely, Ashok Prasad and the Cr. Appeal No. 154 of 2017 filed by the appellant, namely, Pankaj Kumr Tiwary are allowed and the order dated 09.12.2016 passed by A.J.C.-I, Ranchi in A.B.P. No.1685 of 2016 and A.B.P No. 1687 of 2016 respectively is hereby set aside.

29. Accordingly, the appellants, namely, Ashok Prasad and Pankaj Kumar Tiwary are directed to surrender in the Court below within Four Weeks from the date of this order and in the event of their arrest or surren- der, the Court below shall

enlarge the the appellants, namely, Ashok Prasad and Pankaj Kumar Tiwary on bail on furnishing bail bond of Rs. 10,000/- (Rupees ten thousand) each with two sureties of the like amount each to the satisfaction of Judicial Magistrate, Ranchi, in connection with Bundu P.S.- Case no.43 of 2016 corresponding to G.R.No.3944 of 2016, subject to the conditions as laid down under Section 438(2) of the Cr.P.C, and subject to the further condition that on the date of surrender the appellants, namely, Ashok Prasad and Pankaj Kumar Tiwary shall deposit Rs. 1,00,000/- (One lac) each, as ad interim compensation under the Jharkhand Victims Compensation Act, 2012, in the court below. Thereafter the court below shall issue notice to the informant-Bhushan Swanshi (father of the deceased) and on his appear- 9 ance and on proper verification shall release the aforesaid amount in favour of the informant.

30. So far appellant, namely, Ritesh Kumar (appellant in Cr. Appeal No.127 of 2017) is concerned, it appears that appellant Ritesh Kumar is a Constable and at the relevant time he was the Body-guard of Pawan Kumar (appellant in Cr. Appeal No.33/2017) and was deputed in Dasham Falls Police Station and he had acted upon in the alleged crime, as per the direc- tion on given by his superior officers, because he was duty bound to follow the directions of his superior officers.

31. In that view of the matter, the Cr. Appeal No. 127 of 2017 filed by the appellant, namely, Ritesh Kumar is allowed and the order dated 09.12.2016 passed by A.J.C.-I, Ranchi in A.B.P. No.1582 of 2016 is hereby set aside.

32. Accordingly, the appellants, namely, Ritesh Kumar is directed to sur- render in the Court below within Four Weeks from the date of this order and in the event of his arrest or surrender, the Court below shall enlarge the the appellant, namely, Ritesh Kumar on bail on furnishing bail bond of Rs. 10,000/- (Rupees ten thousand) with two sureties of the like amount each to the satisfaction of Judicial Magistrate, Ranchi ,in connection with Bundu P.S.Case no.43 of 2016 corresponding to G.R.No.3944 of 2016, subject to the conditions as laid down under Section 438(2) of the Cr.P.C and subject to the further condition that on the date of surrender the appellant, namely, Ritesh Kumar shall deposit Rs. 50,000/- (Fifty Thousand), as ad interim compensa- tion under the Jharkhand Victims

Compensation Act, 2012, in the court below. Thereafter the court below shall issue notice to the informant- Bhushan Swanshi (father of the deceased) and on his appearance and on proper verification shall release the aforesaid amount in favour of the informant.

33. Further while granting ad interim compensation to the informant the provisions of SC & ST (Prevention of Atrocities) Act 1989 has not been invoked at this stage. (Anant Bijay Singh,J.) Raman/Shahid

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