

Jai Kumar @ Bichha Vs. State

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Court : Delhi

Decided On : May-12-1993

Reported in : 51(1993)DLT526; 1993(26)DRJ473

Judge : Sat Pal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 654 of 1993

Appellant : Jai Kumar @ Bichha

Respondent : State

Advocate for Pet/Ap. : B.S. Rana and; H.P. Sharma, Advs

Judgement :

Sat Pal, J.

(1) This is a petition for release of the petitioner on bail under Section 439 of Code of Criminal Procedure.

(2) Before dealing with the contentions urged by the learned counsel for the petitioner, it may be pointed out here that the petitioner had earlier also filed a petition for release on bail bearing No.Crl.M(M)2543/92 and the said petition was rejected by my order dated 4th February, 1993. The learned counsel for the

petitioner, however, submitted that as stated in the aforesaid order dated 4th February, 1993, even according to the prosecution it was on the instigation of co-accused Bishambar that the petitioner and certain other persons committed murder of Qutub Pyari and Chhuttan. The learned counsel farther drew if my attention to the order dated 28th October, 1992 passed by this court granting bail to co-accused Bishambar. The learned counsel, therefore, contended that when the earlier petition was decided on 4th February, 1993, the petitioner was not aware of the order dated 28th October, 1992 granting bail to the co-accused Bishambar. He submitted that since the bail has been granted to the main accused Bishambar, the petitioner should also be granted bail.

(3) Mr. H.P. Sharma, the leaned counsel appearing on behalf of the State, however, submitted that the role assigned to the petitioner is quite different to that assigned to coaccused Bishambar. He submitted that the recovery of the weapon alleged to have been used in the crime was recovered at the instance of the petitioner.

(4) In reply to the submissions made by the learned counsel for the State, the learned counsel for the petitioner placed reliance on a Supreme Court judgment reported in the case of Thulia Kali Vs State of Tamil Nadu. 1972 SCC (Cri) 543 and a judgment of Division Bench of Orissa High Court reported in the case of Jayasingh Madakami Vs The State, 1986 CrI.L.J. 117.

(5) I have given my thoughtful consideration to the submissions made on behalf of the learned counsel for the parties. As stated in my earlier order dated 4th February, 1993 according to the prosecution case, it was as a result of disclosure statement of co-accused Ram Chander @ Babli certain weapons used for the commission of offence were recovered from the other accused and as a result of the disclosure statement made by the petitioner himself, a knife alleged to have been used for commission of the offence was recovered. From this it is clear that the role assigned to the petitioner is quite different from co-accused Bishambar. The ratio of the judgments cited by the learned counsel for the petitioner are not relevant for deciding the present petition. The same may be relevant for the purpose of deciding the case on merits. In view of the above discussion, I do not

find any merit in the petition and the same is dismissed. The observations given by me hereinabove will have no bearing on the merits of the case.

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