

Md. Shahabuddin Vs. State of Bihar

Md. Shahabuddin Vs. State of Bihar

SooperKanoon Citation : sooperkanoon.com/849518

Court : Patna

Decided On : Apr-22-2009

Reported in : 2009CriLJ3877

Judge : Navin Sinha, J.

Appellant : Md. Shahabuddin

Respondent : State of Bihar

Disposition : Application dismissed

Judgement :

ORDER

Navin Sinha, J.

1. Heard learned Counsel for the petitioner and learned Counsel for the State.
2. The prayer for bail of the petitioner in a police case registered under Sections 414 of I.P.C. and 25(1-B)(a) and 26 of the Arms Act was rejected on 16-10-2006 in Cr. Misc. No. 45671/05. He preferred S. L. P. {Criminal} No. 6798/06 which was also dismissed on 2-2-2007. The renewed prayer for bail has been rejected on 23-5-2008 in Cr. Misc. No. 16692/08. S. L. P. (Criminal) No. 6035/ 08 questioning rejection of the renewed prayer for bail has also been rejected noticing that the trial was at an advanced stage.

3. Learned Counsel for the petitioner submits that charges have been framed under Sections 414 of I.P.C. and 25(1-B)(a) and 26 of the Arms Act. The maximum punishment under the Indian Penal Code is three years. Under the former provision of the Arms Act the punishment is three years, under the latter provision of the Arms Act the punishment given in (sub-section 1) is for a period between six months to seven years.

4. The charge does not specify which subsection of Section 26 of the Arms Act has been invoked.

5. Learned Counsel for the State, opposing the application, submits that punishment under Section 26(3) of the Arms Act can be up to a period of 10 years. He next submits that Section 436-A of the Code of Criminal Procedure is not absolute in terms, as is evident from the proviso itself.

6. A counter-affidavit is stated to have been filed on behalf of the State which is not available on record though copy has been served on the counsel for the petitioner. The Court, therefore, requested the learned Counsel for the State to make available his copy of the counter-affidavit for perusal, so as not to hold up the proceeding for that reason. It has been stated in paragraph No. 6 of the same that in Sessions Trial No. 67/ 04 under Section 364 read with 34 of I.P.C., the petitioner has been convicted by judgment dated 8-5-2007 and awarded life imprisonment. He has also been convicted in Sessions Trial No. 320/01 under Sections 307/34 of I.P.C. and other provisions of the Indian Penal Code for 7 years' rigorous imprisonment. He has also been convicted in Sessions Trial No. 18/07 under the Arms Act and awarded rigorous imprisonment for a period up to 10 years.

7. Section 436-A of the Code of Criminal Procedure provides that in a case where punishment for the offence cannot be death and a person has undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for the offence, he shall be released on bail. The fact that this is not absolute in terms is apparent from the proviso thereof which states that the Court may, after hearing the Public Prosecutor and for reasons to be recorded in writing, order the continued detention of such a person for a period longer than

one-half of the period of imprisonment prescribed in law.

8. The Law Commission recommended incorporation of Section 436-A, keeping in mind the inordinate delay in trials, where even for lesser offences long incarceration continued without trial leading to overcrowding in Jails also. The matter was not at all debated in the Parliament and came to be accepted. The salutary purpose of the amendment would stand defeated if it is construed in a blanket manner without its applicability in the facts and circumstances of a given case.

9. The liberty of citizen has been noticed in Section 436-A, Part I of the Legislation. The proviso balances the liberty of the citizen with the need for protection of the interest of the society. Therefore, it is apparent that the Legislature did not intend to make the first part concerning the liberty of the citizen absolute in terms, but allowed it to be subject to regulatory control. But when this liberty is to be denied, the Court must indicate reasons for exercise of the regulatory control. Thus, the legislation itself incorporates adequate safeguard for the person in custody.

10. Coming to the facts of the present case, the argument that the charge does not specify under which Clause of Section 26 of the Arms Act the petitioner is charged and, therefore, he can be given the benefit of Section 26(1) of the Arms Act under which the maximum punishment is 7 years, does not impress the Court. It would not be the jurisdiction of the Court at this stage to decide under what sub-section of Section 26 of the Arms Act the charge shall lie. That is a matter to be considered by the Court before whom the trial is pending based on the materials and evidence that shall surface before him during the course of trial. The petitioner has himself not questioned in the trial that the sub-section of Section 26 of the Arms Act under which he is charged has not been clarified. Therefore, it cannot be said that he has been prejudiced in any manner. However, this observation is confined for the purposes of consideration of the present bail application only. Under Section 26(3) of the Arms Act the punishment can be maximum up to 10 years. If that be the correct position, Section 436-A of the Code of Criminal Procedure, which is not absolute in terms, *prima facie* has no application to the facts of the case as the petitioner has not completed one-half of the period of

punishment that can be imposed on him under Section 26(3) of the Arms Act.

11. The elasticity with which the Court shall consider grant of bail thereunder for lesser offences, shall be the standard of strict scrutiny by which the Court shall consider a relief under the same where an accused is alleged to be involved in other serious offences and has been convicted in some of them. To grant the benefit of Section 436-A to such a person may be counter-productive of the legislative intent given the propensity of the individual as evident from his past conduct.

12. Coming to the submissions on behalf of the petitioner, as noticed above, this Court has no hesitation in holding that for the reason of the antecedents of the petitioner, as noticed above, of his conviction in serious offences, a possible punishment of 10 years, this Court is not satisfied that he is entitled to the benefit of Section 436-A, Part 1 of the Code of Criminal Procedure. This Court considers the same as sufficient reason under the proviso to the same to hold that his liberty has to be balanced with the interest of the society and he is not entitled to the privilege of bail on that ground. 13. The application is rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com