

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (S.J.) No. 883 of 2022

1. Sawana Singh Kharwar @ Basant Singh
2. Rakesh Kumar Vishwakarma Appellants
Versus
The State of Jharkhand Respondent

CORAM: HON'BLE MR. JUSTICE NAVNEET KUMAR

For the Appellants : Mr. Syed Tafazzul Sajid, Advocate
For the State : Mr. Vineet Kr. Vashistha, A.P.P.

Order No. 05 / Dated: 15th March, 2023
I.A. No. 265 of 2023

Heard learned counsel for the appellants and the learned counsel for the State.

Learned counsel appearing on behalf of the appellants has submitted that one Interlocutory Application bearing I.A. No. 265 of 2023 has been filed praying therein to enlarge the appellants on bail during the pendency of this appeal which has been preferred against the judgement of conviction dated 19.11.2022 and order of sentence dated 22.11.2022, in Sessions Trial No. 57 of 2015, passed by the learned Sessions Judge, Garhwa in which both the appellants have been convicted for the offence punishable under Sections 148/149, 353/149, 307/149 of the Indian Penal Code and under Sections 25(1-b)a, 26, 27 of the Arms Act and Section 17 of the C.L.A. Act and the learned Sessions Judge, Garhwa sentenced the appellants to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.1,000/- each and in default of payment of fine the convicts were directed to undergo rigorous imprisonment for 1 month for the offence committed under Sections 148/ 149 of the Indian Penal Code and further the appellants were directed to undergo rigorous imprisonment for 2 years and to pay fine of Rs.1,000/- each and in default of payment of fine the convicts were directed undergo rigorous imprisonment for 1 month for the offence committed under Sections 353/ 149 of the Indian Penal Code and further to undergo rigorous imprisonment for 6 years and to pay fine of Rs.3,000/- each and in default in payment of fine the convicts were directed to undergo rigorous imprisonment for 3 months for the offence committed under Sections 307/ 149 of the Indian Penal Code and further the appellants were directed to undergo rigorous imprisonment for 2 years and to pay fine of Rs.1,000/- each

and in default of payment of fine the convicts were directed to undergo rigorous imprisonment for 1 month for the offence committed under Section 25(1-B)a of the Arms Act, the appellants were further directed to undergo rigorous imprisonment for 2 years and to pay fine of Rs.1,000/- each and in default of payment of fine the convicts were directed undergo rigorous imprisonment for 1 month for the offence committed under Section 26 of the Arms Act and the appellants were directed to undergo rigorous imprisonment for 2 years and to pay fine of Rs.1,000/- each and in default of payment of fine the convicts were directed to undergo rigorous imprisonment for 1 month, for the offence committed under Section 27 of the Arms Act the appellants were directed to undergo rigorous imprisonment for 6 months and to pay fine of Rs.1,000/- each and in default in payment of fine the convicts were directed to undergo rigorous imprisonment for 1 month, for the offence committed under Section 17 of the C.L.A. Act and all the sentences were directed to run concurrently.

It is submitted on behalf of the appellants that appellant No. 1, Sawana Singh Kharwar @ Basant Singh is in jail for 2 years 10 months and 14 days in this case and appellant No. 2, Rakesh Kumar Vishwakarma is in jail for 2 years 4 months and 13 days. It has been pointed out that the maximum sentence awarded to both the appellants in this case under Section 307/ 149 of the Indian Penal Code were rigorous imprisonment for six years with fine of Rs.3,000/-.

It has further been pointed out that although the appellants have been convicted under Section 307 of the Indian Penal Code but no offence under Section 307 of the Indian Penal Code has been made out, in view of the fact that no injury is alleged to have been inflicted upon any of the persons and therefore, in absence of any injury the learned Court below did not take into consideration the intention and knowledge of the appellants in order to constitute the offence for committing an attempt to murder for which both the appellants have been convicted under Section 307 of the Indian Penal Code and therefore, the impugned judgement of conviction under Section 307 of the Indian Penal Code is bad in law.

Further it has been pointed out from the deposition of the seizure list witness P.W.-1, Sanjay Kumar Sharma who categorically stated in para-8 of the cross-examination that the seizure list was not prepared before him and thus he has not

supported the case of the prosecution. It has further been pointed out that both the appellants have remained for a substantive period in jail and there is no possibility of hearing this appeal in near future and therefore, both the appellants deserve to be enlarged on bail.

On the other hand learned counsel appearing on behalf of the State strongly opposed the contention raised on behalf of the appellants. It has been pointed out that the witnesses examined on behalf of the prosecution from P.W.-1 to P.W.-5 and P.W.7 have supported the case of the prosecution and therefore, the appellants do not deserve to be enlarged on bail.

Having heard the learned counsel for the parties, perused the records of this case.

In the light of the persuasive submission advanced on behalf of the appellants it is found just and proper to enlarge the appellants on bail during the pendency of this appeal.

Accordingly, the appellants are directed to be enlarged on bail on furnishing bail bond of Rs.25,000/- (Rupees Twenty-five Thousand only) each with two sureties of the like amount each, to the satisfaction of learned Sessions Judge, Garhwa, in connection with Sessions Trial No. 57 of 2015, subject to the conditions as laid down u/s 439 of Cr.P.C. and also subject to the further conditions that each of the appellants shall deposit the entire fine amount as awarded by the learned Court below under different Sections / Counts i.e. a sum of Rs.9,000/- by each of the appellants under all the Counts, without being prejudice to the rights of their defence.

Accordingly, the aforesaid Interlocutory Application being I.A. No. 265 of 2023 gets disposed of.

J.Minj

(Navneet Kumar, J.)