IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.3175 of 2017

Arising Out of PS.Case No. -65 Year- 2016 Thana -BALIA District- BEGUSARAI

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Lalan Kumar Choudhary @ Lalan Choudhary, son of Late Ramanand Choudhary, resident of Village- Masudanpur, P.S.- Ballia, District- Begusarai.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :
For the Appellant/s : Mr. Binod Kumar
For the Respondent/s : Mr. Smt Usha Kumari No-1

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

3 06-12-2017 The appellant has challenged the order dated 14.06.2016 passed by the learned Special Judge SC/ST, Begusarai in connection with Ballia P.S. Case No. 65 of 2016 instituted for the offences under Sections 147, 148, 149, 341, 342 and 302 of the Indian Penal Code, Section 27 of the Arms Act and Sections 3(2)(v) of the SC/ST (Prevention of Atrocities) Act whereby his prayer for being released on anticipatory bail has been rejected.

It has been submitted on behalf of the appellant that as soon as the informant and her two brother-in-laws viz. Mahesh Ram and Ram Pravesh Ram reached near the flour mill, while returning from Ballia Bajar, all the accused persons including the appellant surrounded them. The informant was dragged down from the motorcycle. It has been alleged that thereafter co-accused

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Surendra Choudhary ordered to kill the brother-in-laws of the informant so that no Parcha holder would dare to come on the land given to them by way of Parcha. On the orders of Surendra Choudhary, Surendra Choudhary himself, Himmat Choudhary, Devendra Choudhary, Jitendra Choudhary and Chhotelal Choudhary fired from their weapons indiscriminately, leading to the death of the two brother-in-laws of the informant.

Learned counsel for the appellant has submitted that though the appellant has been named in the FIR but the act of firing has specifically been attributed to other accused persons.

It has also been submitted that relying upon the statement of one Sarita devi, who claimed to be an eye witness to the occurrence, Himmat Choudhary, one of the accused who is alleged to have fired from his weapon, has been granted bail. The aforesaid Sarita Devi had stated that Himmat Choudhary and Devendra Choudhary were not present at the place of occurrence.

Be that as it may, since the person against whom specific act of firing has been alleged, has been granted the privilege of anticipatory bail, this Court is inclined to set aside the order dated 14.06.2016 and accord the similar privilege to the appellant as well. While saying so, this Court has also taken note of the fact that there is a land dispute between the parties and the

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addition of the provisions of SC/ST Act is only for the purposes of adding seriousness to the offence. Assuming but not admitting, it has been argued, even if the allegations in the FIR are accepted to be *ex facie* true, the offences under the provisions of SC/ST Act cannot at all be made out.

Considering the facts aforesaid, the order dated 14.06.2016 is set aside.

Let the appellant above named, in the event of his surrender before the court below within a period of three weeks from the date of receipt/production of a copy of this order, be released on bail on furnishing bail bond of Rs. 10,000/- (Rs. Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Special Judge SC/ST, Begusarai in connection with Ballia P.S. Case No. 65 of 2016, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

(Ashutosh Kumar, J)

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