

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.35 of 2020

Arising Out of PS. Case No.-193 Year-2019 Thana- DELHA District- Gaya

Jahir Yadav @ Vikash Yadav @ Vikash Kumar, Son of Balkishun Yadav,
Resident of Village- Kharkhura Bhaluahi, P.S.- Delha, District- Gaya.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Subhash Chandra Bose, Advocate
For the Respondent/s : Mr.Binay Krishna, Spl. P.P.

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

4 27-05-2020 The matter has been taken up through virtual Court proceeding.

Heard Mr. Subhash Chandra Bose, learned counsel for the appellant and Mr. Binay Krishna, learned Special P.P. for the respondent-State.

The present appeal has been preferred on behalf of the appellant for setting aside the order dated 15.10.2019 passed by learned Special Judge, SC/ST, Gaya in B.P. No. 244 of 2019, whereby the appellant's prayer for bail in connection with Delha P.S. Case No. 193 of 2019 registered for the offences punishable under Sections 302/34 of the Indian Penal Code, Section 27 of the Arms Act and Sections 3(r)(v) of SC/ST (Prevention of Atrocities) Act, has been rejected.

The prosecution case, as per the fardbeyan of Bittu



Paswan recorded on 11.07.2019 at 10.30 A.M. by Arun Kumar, SHO of Delha P.S. at Emergency Ward, Anugrah Narayan Magadh Medical College and Hospital, Gaya, is to the effect that on 10.07.2019 at 8.00 P.M. the brother of the informant, Amar Paswan was going on his motorcycle along with the informant but on the way, five persons namely, Manoj Yadav, Kaushal Yadav, the appellant, Jahir Yadav, Ritik Kumar and Lallu Paswan surrounded the informant and his brother. Thereafter, co-accused Manoj Yadav ordered to kill the brother of the informant and fired which hit brother of the informant and other accused persons also resorted to fire on the informant. Thereafter, the informant ran to his house but again came back along with other family members on spot to find his brother in injured condition. Thereafter, the brother of the informant was taken to the Magadh Medical College and Hospital, Gaya where he was declared dead.

It is submitted by learned counsel for the appellant that the specific accusation of firing which hit the brother of the informant has been levelled against co-accused Manoj Yadav. Though, there is accusation of firing by altogether five accused persons but admittedly, only three injuries have been sustained by the victim. From the FIR, it appears that the informant did



not see the entire occurrence and no one else was present at the place of occurrence. The appellant is languishing in custody since 12.07.2019 and even assuming the accusation to be true, no case is made out under SC/ST (Prevention of Atrocities) Act.

Learned Special P.P., however, submits that though specific accusation of firing on the brother of the informant is against co-accused Manoj Yadav but it is also alleged that all the accused persons including the appellant resorted to fire though the victim received three injuries

Considering the fact that the specific accusation of causing firearm injury is against co-accused Manoj Yadav and there is omnibus and general accusation of firing against five accused persons on the informant, the informant has not received any injury, the first information report does not suggest any specific accusation of firing at the brother of the informant by the appellant or any other co-accused persons and the fact that the investigation has already been concluded, the order dated 15.10.2019 passed in B.P. No. 244 of 2019 is, hereby, set aside and the appellant above named is directed to be released on bail for a period of three months for the present on furnishing one surety to the satisfaction of the learned Special Judge, SC/ST, Gaya in connection with Delha P.S. Case No. 193



of 2019.

However, in view of the present pandemic COVID-19, it will be open for the learned Court below to accept the bail bond upon furnishing an undertaking by the surety, on photo copy of his Aadhar Card, to the effect that he is ready to become the bailor of the appellant which may be transmitted by such surety to the learned Court concerned through e-mode.

The provisional bail of the appellant will be confirmed by the learned Court below within three months on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties, including one surety given at the time of provisional bail, of the like amount each to the satisfaction of the learned Special Judge, SC/ST, Gaya in connection with Delha P.S. Case No. 193 of 2019.

The learned Court below is at liberty to further extend the period of provisional bail if the lock down is not over in next three months.

Accordingly, the appeal is allowed.

(Dinesh Kumar Singh, J)

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