

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.155 of 2020**

Arising Out of PS. Case No.-431 Year-2019 Thana- ATRI District- Gaya

Farukh Khan @ Md. Farukh Khan Son of Late Niyamat Khan Resident of
Village-Dihuri, Police Station-Atari, District-Gaya.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Sanjay Kumar Singh, Advocate
For the Respondent/s : Mrs.Usha Kumari 1, Special P.P.

**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER**

5 27-05-2020 The matter has been taken up through virtual Court proceeding.

Heard Mr. Sanjay Kumar Singh, learned counsel for the appellant and Mrs. Usha Kumari 1, 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 28.11.2019 passed by learned Special Judge, SC/ST, Gaya in B.P. No. 280 of 2019, whereby the appellant's prayer for bail in connection with Atri P.S. Case No. 431 of 2019 registered for the offences punishable under Sections 302, 120B, 201/34 of the Indian Penal Code and Sections 3(1)(r)(s)(u) of SC/ST (Prevention of Atrocities) Act, has been rejected.

The prosecution case, as per the written report of



Bilas Choudhary submitted to the Station House Officer of Atri Police Station, is to the effect that on 06.10.2019 at 6.30 A.M., the informant received information that the dead body of his son, Anil Choudhary was lying in the paddy field of Ram Awatar Choudhary, who was traceless since 28.09.2019. It is alleged that on 27.09.2019 at 5.00 to 6.00 P.M. the son of the informant had fight with co-accused Kabir Khan, resident of village – Dihuri and the son of the informant was abused by son of co-accused Shamsheer Khan namely, Farukh Khan, the appellant, co-accused Jamal Khan and Jawed Khan and somehow, the son of the informant was saved but the accused persons gave him life threatening. On 28.09.2019 at 8.00 -9.00 P.M. the son of the informant along with Devendra Yadav and one unknown person went to consume liquor and thereafter, the son of the informant went traceless and his mobile phone was found switched off. The informant raised suspicion against six accused persons including the appellant.

From the materials on record, it appears that the son of the informant went traceless on 28.09.2019 but on recovery of the dead body on 06.10.2019 the suspicion has been raised against the appellant and other co-accused persons. The appellant is languishing in custody since 06.10.2019.



Mrs. Usha Kumari I, learned Special P.P. submits that in paragraphs 17 and 18 of the case diary the family members of victim have supported the prosecution case and on the basis of the statement recorded in paragraph 27 of the case diary, the statement of witness Saukhin Manjhi @ Rohit Manjhi under Section 164 of the Cr.P.C. has been recorded which suggests that he saw the victim's dead body being carried by co-accused Jakir, Harmindar Mukhiya, Kedar Manjhi and Bachu Manjhi but he has not named the appellant.

Considering the delayed lodging of the case, the accusation being based on suspicion, the witness, who saw dead body of the victim being carried by other accused persons, has not named the appellant and the fact that the investigation has already been concluded, the order dated 28.11.2019 passed in B.P. No. 280 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 Atri P.S. Case No. 431 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 Atri P.S. Case No. 431 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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