

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.5016 of 2019

Arising Out of PS. Case No.-231 Year-2019 Thana- BANIAPUR District- Saran

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1. BHIKHARI RAM Son of Raj Bali Ram Resident of Village-Pithauri, Police Station-Baniyapur, District-Saran at Chapra.
 2. Anita Devi Wife of Budh Ram Resident of Village-Pithauri, Police Station-Baniyapur, District-Saran at Chapra.
 3. Prabhawati Devi Wife of Bhikhari Ram Resident of Village-Pithauri, Police Station-Baniyapur, District-Saran at Chapra.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Vipin Kumar Singh
For the Respondent/s : Mr.Binay Krishna

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

6 10-07-2020 The Court proceeding has been conducted through virtual mode.

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

The present appeal has been filed on behalf of the appellants for setting aside the order dated 18.09.2019, passed by learned 1st Additional Sessions Judge, SC/ST, Saran at Chapra in Baniyapur P.S. Case No. 231 of 2019, whereby the prayer for bail of the petitioner has been rejected.

The appellants are languishing in custody in a case registered for the offences punishable under Sections 147, 148,



149, 341, 323, 302,504 and 506 of the IPC and Sections 3(I)(s) of the SC/ST (Prevention of Atrocities) Act, hence prayer for bail has been made.

The prosecution case, as per the Fardbeyan of Md. Azad recorded by the SI of Police, Daya nand Sah, on 17.7.2019 at 8.45 A.M, at Sadar Hospital, Chapra, is to the effect that on 19.7.2019 at 4.30 A.M. the brother of the informant namely, Naushad Alam was at his house, in the meantime, Raju Nat and Dinesh Nat came to the informant's house and requested the brother of the informant Naushad to take a pick-up van to Pithauri Nandlal Tola for transporting animals. As soon as all the three persons reached Nandlal Tola, all the FIR named accused persons and 50-100 people started assaulting the brother of the informant, Raju Nat and Bideshi Nat, as a result all three died on the spot, leading to registration of the present case.

Learned counsel for the appellants submits that the appellants are not named in the FIR. Their name sprang up in the subsequent statement of the informant, whereas contrary to the specific accusation against eight persons, in subsequent statement, the informant has named altogether 18 persons including the appellants. So far as statement of Chhotu Nat



recorded in paragraph 8 of the case diary and statement of Md. Siraj recorded in paragraph 11, statement of Muzaffar Hussain recorded in paragraph 21 and statement of Azad Ali recorded in paragraph 22 of the case diary are concerned, they all reached on the spot after the death of the victim and they came to know through people that the appellants were also involved in the commission of the offence. Hence, these are subsequent developments. No video clipping has been brought on record to suggest that the appellants were making assault. It is further submitted that for the same occurrence, another FIR being Baniapur P.S. Case No. 230 of 2019 was registered under Sections 457, 380, 147, 148, 149 and 302 of the IPC was registered by one Budh Ram, wherein he has alleged that on 18.7.2019 while he was sleeping at 2 O'clock, he got up to find that some one is stealing away his buffalo and thereafter, he raised alarm and subsequently he came to know that she-goat and he-goat have also been stolen away, but in the meantime, the neighbouring people came and killed the victim. This FIR was lodged against unknown. It is further submitted that no offence under the provisions of SC/ST (Prevention of Atrocities) Act is made out because the appellants also belong to SC category. The FIR named accused persons have been granted



bail by different benches of this Court as co-accused Dharmendra Ram has been granted bail vide Cr. Appeal No. 4633 of 2019 and Shankar Ram in Cr. Appeal No. 4595 of 2019. Statement has been made in paragraph 3 of the memo of appeal that the appellants are not having any criminal antecedent.

Learned counsel for the informant submits that this is a case of mob lynching where three persons have been killed. Though the appellants are not named in the FIR, but in subsequent statement, the informant has named them, whereas their names have also been taken by different witnesses in paragraph nos. 8, 11 and 21 of the case diary though they are not the eye witnesses to the alleged occurrence. However, in video clipping the involvement of the appellants has transpired which has come during investigation and the investigation with regard to others has still not concluded.

The contention of learned counsel for the informant has been supported by the learned counsel for the State.

Considering the fact that the appellants are not named in either of the two FIRs, informant initially named eight persons but subsequently named 18 persons, that apart, all witnesses in the case diary are hear say witnesses and none have been examined as eye witness, investigation with regard to the



appellants has already been concluded, the learned Sessions Judge's order does not reflect involvement of the appellants which has been arrived at by the investigating agency on the basis of video clipping and above all, the FIR named accused have already been granted bail, the order of the learned Sessions Judge dated order dated 18.09.2019, passed by learned 1st Additional Sessions Judge, SC/ST, Saran at Chapra in Baniyapur P.S. Case No. 231 of 2019 is set aside. The appellants are directed to be released on bail for the present provisionally for a period of three months on furnishing one surety to the satisfaction of the learned 1st Additional Sessions Judge, SC/ST, Saran at Chapra in connection with Baniyapur P.S. Case No. 231 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 on 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 petitioner which may be transmitted by such surety to the learned Court concerned through e-mode.

The provisional bail of the petitioner will be confirmed by the learned Court below within three months on furnishing bail bond of Rs.10000/- (ten thousand) with two



sureties including one surety given at the time of provisional bail of the like amount each to the satisfaction of learned 1st Additional Sessions Judge, SC/ST, Saran at Chapra in connection with Baniyapur P.S. Case No. 231 of 2019.

The learned Court below will be at liberty to extend the period of provisional bail further if the court proceeding in physical mode will not resume in next three months.

Accordingly, the present appeal is disposed of.

(Dinesh Kumar Singh, J)

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