

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL APPEAL (SJ) No.1595 of 2021**

Arising Out of PS. Case No.-258 Year-2020 Thana- BATHNAHA District- Sitamarhi

Rakesh Pathak Son Of Nagendra Pathak Resident of Village Majhauriya, P.S.
Bathnaha, District- Sitamarhi

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr.Pushpendra Kumar Singh, Advocate
For the Respondent/s : Mr. Sadanand Paswan, Spl. P.P.

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

2 08-04-2021 Heard learned counsel for the appellant and Mr.
Sadanand Paswan, Spl. P.P. for the State.

The appellant in the present case is seeking setting aside of the order dated 21.12.2020 passed in Bathnaha P.S. Case No. 258 of 2020 registered for the offence punishable under Sections 302/34 of the Indian Penal Code, Section 27 of the Arms Act and Sections 3(i)(r)(s)(w)(i)/3(2)(v) of the SC/ST (POA) Act by learned 1st Additional Sessions Judge-cum-Special Judge (SC/ST) (POA) Act, Sitamarhi whereby and whereunder the prayer for regular bail of the appellant has been rejected.

Learned counsel for the appellant submits that as per prosecution story while the informant, his younger brother



Avinash Paswan and his cousin brother Aditya Paswan were going to attend call of nature and when they crossed the Darwaja of Sachin Jha, they stopped there on seeing the female dancers on which they have been abused by the accused persons and co-accused Gulgul Jha fired shot from his pistol on the chest of Avinash Paswan resulting he died on the spot. It is alleged that accused persons chased and fired upon the informant but they somehow escaped from there.

Learned counsel submits that the appellant is innocent and has falsely been implicated in this case. It is submitted that there is no specific allegation of overt act against the appellant and the appellant has been shown as member of unlawful assembly. It is further submitted that two similarly situated co-accused have been granted bail. The appellant is in custody since 24.11.2020 having no criminal antecedent.

Learned Spl. P.P. for the State has opposed the prayer for bail of the appellant.

Having regard to the facts and circumstances of the case, wherein it is not disputed that so far as this appellant is concerned, there is no allegation that he had fired upon the deceased, the specific allegation of firing is against the co-accused Gulgul Jha and Mr. Sadanand Paswan, learned Special



P.P. for the State fairly admits that two similarly situated co-accused have been granted bail by learned co-ordinate Bench of this Court, this Court sets- aside the impugned order.

Let the appellant above named be released on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned 1st Additional Sessions Judge-cum-Special Judge (SC/ST) (POA) Act, Sitamarhi in connection with Bathnaha P.S. Case No. 258 of 2020, subject to the condition as laid down under Section 437 (3) Cr.P.C. as under :

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

And further condition that the court below shall verify the criminal antecedent of the appellant and in case at any stage



it is found that the appellant has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the appellant. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

This appeal stands disposed of.

(Rajeev Ranjan Prasad, J)

vats/-

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

