

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL APPEAL (SJ) No.1253 of 2021**

Arising Out of PS. Case No.-355 Year-2019 Thana- DALSINGHSARAI District- Samastipur

SHIVAM KUMAR S/o Ram Kumar Mahto @ Sajan Mahto R/o village-
Ajnaul Bhatgama, P.S.- Dalsingsarai, District- Samastipur

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr.Abhay Shankar Singh, Advocate

For the Respondent/s : Mr.Binay Krishna, Spl. PP

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

4 30-06-2021 Heard learned counsel for the appellant and learned
Spl.P.P. for the State.

Appellant, in the present case, is seeking setting aside the order dated 10.06.2020 passed by learned Special Judge SC/ST Act, Samastipur by which the prayer for grant of bail to the appellant has been rejected in connection with Dalsingsarai P.S. Case No. 355 of 2019 registered for the offences punishable under Section 201, 302, 34, 376D of the Indian Penal Code and under Section 2(1)(r), 3(1)(s) and 3(2)(va) of the SC/ST (POA) Act.

Learned counsel for the appellant submits that it is a case of false implication of the appellant. As per the prosecution story the mother of the informant went to attend the call of nature in the adjacent field at around 10 P.M. on 12.12.2019,



which was the winter season, she did not return home even after passing of long time, thereafter the informant claims that he along with his neighbours went in search of his mother. It is alleged that they moved towards Dobha Bhatgama Chour where the informant saw 4-5 people running away. In the moon-light he claims to have identified all of them including this appellant. The informant found the nude dead body of his mother lying in the 'Chour'. He alleged that the two named persons along with his other associates had caught his mother in the darkness and committed murder after collectively raping her.

Learned counsel submits that in course of investigation the Investigating Officer has found that it is a case of killing of the lady somewhere else and throwing the dead body at some other place. Save and except the ligature mark around the neck of the body no other sign of assault has been found on the body.

Learned counsel further submits that the informant claims that in the moonlight he identified the appellant running away but it is not believable because it was the month of December and winter season in which around 10-11 P.M. it is practically not possible to identify a person who is running away and whose face is not towards the



informant.

Learned counsel further submits that the victim was aged about 55 years and police has not found any sign of rape on her. It is for this reason the charge-sheet has not been filed under Section 376D of the I.P.C. Learned counsel further submits that in any case the provision of SC/ST Act would not be applicable because the alleged offence has not been committed on the mother of the informant by virtue of her being a member of scheduled castes and scheduled tribes.

Lastly it is submitted that it is a case of false implication and the appellant has remained in jail for 18 months, investigation against him is complete but the trial is not likely to be concluded in near future, thus the appellant deserves the privilege of bail.

Mr. Binay Krishna, learned Special Public Prosecutor for the State has opposed the prayer for bail of the appellant. Learned counsel has read out the certain paragraphs of the case diary. It is submitted that the informant and his father who are the family members have supported the prosecution case, they claimed in their statement that they had gone in search of the victim lady along with other persons but who were the other persons has not been disclosed. While answering the specific



queries of this Court, learned Special P.P. admits that in the case diary no other person has come forward to say that he had joined the search.

Having regard to the facts and circumstances of the case in the nature of the materials placed before this Court, investigation report not showing commission of rape and it is being discovered that the lady was killed somewhere and then the dead body was thrown in the 'Chour', no independent material having been brought before this Court to inspire confidence about the involvement of this appellant, at this stage, having noticed that the appellant remained in jail for 18 months, investigation against him is complete but the trial is not likely to be concluded in near future, this Court sets-aside the impugned order and directs release of the appellant above named on bail on furnishing of bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned Special Judge, SC/ST Act, Samastipur, in connection with Dalsingsarai P.S. Case No. 355 of 2019, 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.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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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'.

