

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.766 of 2020

Arising Out of PS. Case No.-149 Year-2019 Thana- MADHUBAN District- East Champaran

DILIP SAH Son of Ram Chandra Sah Resident of Village - Talimpur,
Gulwara Madhuban, P.S.- Madhuban, District- East Champaran

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Karandeep Kumar, Adv.

For the Respondent/s : Mrs.Usha Kumari 1, Special P.P.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

3 08-04-2021

Heard both sides.

The appellant filed this appeal under Section 14(A)(2) of the S.C./S.T. Act against the order dated 25.01.2020 passed by learned 1st Additional Sessions Judge-cum-Special Judge, SC/ST, East Champaran, Motihari by which the anticipatory bail of the appellant has been rejected in Madhuban P.S. Case No.149 of 2019 registered under Sections 341, 323, 324, 307, 302, 354B, 504 and 34 of the Indian Penal Code and under Section 3(i)(r)(s)/2(v)(a) of the S.C./S.T. Act on the ground that in para 27 of the case diary, the involvement of the appellant in the murder of the husband of the informant has come.

The informant, widow of the deceased, alleged that her husband Santosh Ram was a labour of Mukhiya Bishu Sah. Her husband was demanding his outstanding wages. Bishu Sah told that he would pay the entire wages, if her husband continued to work. The informant further disclosed that Bishu Sah asked her husband to come on 07.07.2019 for rendition of accounts and payment of the outstanding wages. Her husband went to the



house of Mukhiya where Bishu Sah, Sanjay Kumar and Shambhoo Kumar, both sons of Bishu Sah, Kishori Sah, Motilal Sah, Lalan Sah, Dinesh Sah and Pramod Sah were present. Some other persons were also present there. As soon as her husband demanded his outstanding dues, all became angry and started assaulting her husband with fist and slap, stick and iron rod. They were abusing her husband by naming his caste. The informant on alarm went there and saw that Sanjay Sah, the elder son of Bishu Sah was assaulting her husband with iron rod. Shambhoo Kumar was assaulting her husband with legs on his abdomen and testicles. Her husband became unconscious. The accused persons also assaulted the informant and made her semi naked. The informant got her husband treated by Dr. Harendra Prasad but her husband was referred for better treatment and during the course of treatment, her husband died.

The learned counsel for the appellant submits that appellant is not named in the F.I.R. The informant did not make any sorts of allegation against the appellant. From perusal of the F.I.R. itself, it would appear that the informant is the sole eye witness of the occurrence. Even during the course of investigation, the informant did not disclose the name of appellant in her further statement. Other witnesses also did not disclose the name of the appellant in their statement but the Dy.S.P. in his supervision note, as contained in para 27 of the case diary, suspected the involvement of the appellant in the murder of the husband of the informant but the basis of such suspicion is not mentioned. It appears that Dy.S.P. has not recorded the statement of any of the witness and on the basis of his own source of information suspected the involvement of the appellant in the occurrence. Mere suspicion of Dy.S.P. is of no



consequence unless the informant or any of the witness disclosed the name of the appellant. It is further submitted that when Dy.S.P. supervised the case, the investigating officer turned the investigation of the case in other direction and started implicating some other persons whose names were not disclosed by the informant and any other eye witness and this fact shows that the investigating officer and the Dy.S.P. made investigation of the case in very perfunctory manner and with ulterior motive.

Learned Special P.P. did not dispute this fact.

Having considered the submission and on perusal of the record, it appears that appellant is not named in the F.I.R. Even the informant, who claims herself to be an eye witness of the occurrence, and any other witness did not disclose the name of the appellant as one of the participants of the occurrence in which the husband of the informant was killed but for the first time, the Dy.S.P. on his own source of information suspected the involvement of the appellant and thereafter the investigating officer suddenly turned the investigation towards another direction in order to show that the persons whose names are disclosed by the informant and other witnesses are not the real accused and some other persons are accused in the murder of the husband of the informant. Thus, I find that the appellant deserves anticipatory bail.

Taking into consideration the facts aforesaid, the appeal is allowed, the order dated 25.01.2020 is set aside and let the appellant, above named, in the event of his arrest or surrender within a period of four weeks be released on bail on furnishing bail bond of Rs.10,000/-(Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned 1st Additional Sessions Judge-cum-Special Judge, SC/ST, East



Champaran, Motihari in connection with Madhuban P.S. Case No.149 of 2019, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

(Prabhat Kumar Jha, J)

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