

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2505 of 2021**

Arising Out of PS. Case No.-119 Year-2020 Thana- DANIYAWAN District- Patna

DAYANAND SAO @ DAYANAND PRASAD S/o- CHANDESHWAR PRASAD @ CHANDESHWAR SAO Resident of Village- Arai Benipur, P.S.- Daniyawar, District- Patna. At present Bankipore Gorakh, P.S.- Fatuha, Dist- Patna.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Vijay Anand, Adv.

For the Respondent/s : Mr.Sadanand Paswan, Spl.PP

**CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER**

3 10-08-2021 Heard learned counsel for the appellant, learned counsel for the informant and learned Special P.P. for the State through virtual Court proceedings.

The appeal has been filed by the appellant against the order dated 26.03.2021 by the learned Additional District and Sessions Judge-IIIrd cum Special Judge S.C./S.T. Act, Patna whereby the prayer for bail of the appellant was rejected, in connection with in Special Case No. 438/2020 arising out of Daniyawar P.S. Case No. 119/2020 registered for the offences under Sections 147, 148, 149, 302, 120(B) of the Indian Penal Code, Section 27 of the Arms Act and under Sections 3 (i)(r) (s) / 3 (2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.



Prosecution case, in brief, is that on 06.08.2020 while he was returning back with his own brother Sunil Paswan on motorcycle. One co-accused Dayanand Paswan and seven other named accused persons and other unknown persons surrounded them. The co-accused Dayanand Paswan caught the deceased and taken away in the field. The petitioner had fired upon the deceased and the deceased sustain gunshot injury in his back. The other co-accused caught the hand of the deceased and slammed him. The co-accused, namely, Dayanand Paswan caught the hair of the deceased and cut the neck of the deceased by means of Fasuli. The informant fled away from the place of occurrence and filed the present FIR.

Learned counsel for the appellant submits that the appellant is innocent and has been committed no offence in this case. It is submitted that even for a sake of argument if it is accepted that the allegation as alleged in the FIR is true no case of SC/ST Act is made out against the appellant as he was not abusing the informant by taking caste name. The allegation against the appellant is that he fired upon deceased. The co-accused, namely Dayanand Paswan caught the hair of the deceased and cut the neck of the deceased by means of Fasuli. He further submits that the postmortem report is not supported



the prosecution case that the appellant had fired upon in his back of the deceased. As per postmortem report, injury no.2 is one entry wound with inverted margin was 2 cm medial of left nipple between 3rd and 4th ribs over left side chest size measure 1 cm x 0.5 cm x chest cavity deep and others injury nos. 1 to 5 were sharp cutting injury was found over the neck. Injury nos. 2 and 3 were forearm injury.

Learned counsel for the appellant submits that the appellant is in custody since 30.08.2020 and has got no criminal antecedent. But later on he has filed supplementary affidavit stating therein that in para 4 of the supplementary affidavit, the appellant has 06 criminal antecedents.

Learned counsel for the informant as well as Special P.P. for the State opposed the prayer for bail and submits that there is specific allegation against the appellant is that he fired upon his back of the deceased, but postmortem report shows that due to haemorrhage and shock due to above mentioned caused by firearm weapon and sharp cutting weapon.
Injury

Heard the submission of the parties. I perused the record including case diary as per postmortem report, it shows that the firearm injury is in front of the deceased and not in back



of the deceased. It is not supported the prosecution case, the appellant is fired in back of the deceased.

Considering the aforesaid facts and circumstances of this case, let the appellant, above named is directed to be released on bail on furnishing bail bond of Rs. 25,000/- (Rupees twenty five thousand) with two sureties of the like amount each to the satisfaction of learned court below where the case is pending in connection with Special Case No. 438/2020 arising out Daniyawar P.S. Case No. 119/2020; subject to the following conditions:

(1) that one of the bailors will be a close relative of the appellant, who will be given an affidavit giving genealogy as to how he is related with the appellant. He will also undertake to inform the Court if there is any change in the address of the petitioner.

(2) that the bailor shall also state on affidavit that he will inform the Court concerned if the appellant is implicated in any other case of similar nature after his release in the present case and thereafter the Court below will be at liberty to initiate proceeding for cancellation of bail on the ground of misuse.

(3) that the appellant will be well represented on each and every date fixed in the case and if he fails to do so on



two consecutive dates his bail bond will be liable to be cancelled.

(4) that the appellant shall co-operate with the investigation, if not already concluded and make himself available as and when so required and in case of failure, the State shall be at liberty to move for cancellation of bail.

Accordingly, the order dated 26.03.2021 is set aside and this appeal is allowed.

(Anjani Kumar Sharan, J)

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