

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2590 of 2021**

Arising Out of PS. Case No.-428 Year-2020 Thana- SUGAULI District- East Champaran

1. Yadolal Kushwaha aged about 55 years S/O Late Rajdeo Kushwaha R/O village- Koraiya Murda Chapra, P.S.- Sugauli, District- East Champaran
2. Bablu Kumar aged about 19 years S/o Yadolal Kushwaha R/o village- Koraiya Murda Chapra, P.S.- Sugauli, District- East Champaran

... .. Appellants

Versus

The State of Bihar

... Respondent

Appearance :

For the Appellants : Mr.Abhishek Kumar, Advocate

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

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER**

2 24-06-2021 This matter is taken up for consideration through
Video Conferencing.

Heard learned counsel for the appellants and the State.

The present appeal is directed against the order dated 18.3.2021, passed by the Additional Sessions Judge I, East Champaran, Motihari in a case registered for the offence punishable under Section 302 and other sections of the Indian Penal Code and Section 3 I(r)(s), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and section 27 of the Arms Act, whereby bail of the appellants has been rejected.

As per the prosecution case, petitioner no.1 committed marpit with the informant alleging that his goat was grazing the field and when the informant's husband and others tried to pacify the matter, FIR named accused persons including



the appellants and other 30/40 accused persons, again committed marpit. It is further alleged that co-accused Yadalal Kushwaha S/o Shital Kushwaha and co-accused Om Prakash Kushwaha shot thrice on the informant's husband as a result of which he sustained fire arm injury in his head and succumbed to the injury during course of treatment.

Learned counsel for the appellants submits that there is general and omnibus allegation of assault and no specific overt act has been alleged against these appellants. Allegation of firing is against another co-accused Yadalal Kushwaha S/o Shital Kushwaha, whereas appellant no.1 is Yadolal Kushwaha S/o Late Rajdeo Kushwaha. More so, for the occurrence of 6.8.2020, FIR was lodged on 28.8.2020 without giving explanation of delay in lodging of the FIR. No incriminating material has been collected against the appellants during course of the investigation. Appellants are in custody since 18.2.2021.

Learned counsel for the state opposes the prayer for bail and submits that the appellants also participated in the alleged occurrence.

Considering the rival submissions of the parties, materials available on the record, and the fact that there is no allegation of specific overt act, delay in lodging the FIR and appellants



have clean antecedent, this appeal is allowed and the impugned order dated 18.3.2021, is set aside.

Accordingly, the appellants, above named, are directed to be released on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of the Additional Sessions Judge I, East Champaran Motihari in Sugauli Police Station Case No. 428 of 2020 on the following conditions:-

(1) Appellants shall co-operate in the trial and shall be properly represented on each and every date fixed by the Court and shall remain physically present as directed by the Court and on their absence on two consecutive dates without sufficient reason, their bail bond shall be cancelled by the Court below.

(2) If the appellants tamper with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

(Prabhat Kumar Singh, J)

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