

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL APPEAL (SJ) No.3017 of 2021**

Arising Out of PS. Case No.-91 Year-2021 Thana- BANIAPUR District- Saran

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KAILASH KUMAR PRASAD @ KAILASH PRASAD Son of Bidhya Prasad Resident of Village - Harpur ke Tola, P.S.- Baniyapur, Distt.- Saran at Chapra.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant/s : Mr.Jeetendra Narayan, Advocate

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

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

3 01-09-2021 Heard learned counsel for the appellant and Ms. Usha Kumari-1, learned Special P.P. for the State.

Appellant, in the present appeal, is seeking setting aside the order dated 17.06.2021 passed by learned 1st Additional Sessions Judge – cum – Special Judge, SC/ST (Prevention of Atrocities) Act, Saran at Chapra in connection with Bariyarpur P.S. Case No. 91 of 2021 registered for the offence under Sections 147, 148, 149, 341, 323, 324, 325, 307, 302 and 504 of the Indian Penal Code and Section 3(i)(r)(s), 2(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

As per the prosecution story, the informant and the appellant's side are co-villagers, there was a dispute between co-villager Bidya Prasad and Bijli Sah in course of which the father of the informant went there to pacify the matter. On this, it is

alleged that Bidya Prasad started abusing the father of the informant saying that how he dared to come at his door and ordered the members of his family to kill the father of the informant.

It is further alleged that on his asking the co-accused named from serial no. 2 to serial no. 7 who are all family members and son-in-law of co-accused Bidya Prasad came there lashed with iron rod, khanti and lathi and started assaulting the father of the informant. It is alleged that co-accused Surbali Prasad assaulted by an iron rod, Bidya Prasad by an iron Khanti, this appellant was lashed with lathi and all of them indiscriminately assaulted on the head of the father of the informant as a result whereof he sustained grievous injuries and fell down later on he was taken to the hospital but died on the way.

Learned counsel for the appellant submits that from the F.I.R. itself it may be found that the deceased had gone at the door of the appellant. There is a counter version of the alleged occurrence in which the co-accused Bidya Prasad has alleged that when he was at his door, the named accused persons including the father of the informant reached there and they started assaulting the appellant's side causing grievous injuries to this appellant and Manish Kumar.

Learned counsel submits that a counter case has been

registered being Baniyapur P.S. Case No. 95/2021.

It is further submitted that the post-mortem report does not suggest multiple injuries on the head of the deceased. The appellant has otherwise no criminal antecedent, investigation against him is complete. Learned counsel submits that the co-accused has been granted bail by learned coordinate Bench of this Court in Cr.Appeal (SJ) No. 3188/2021.

Learned Special P.P. for the State has though opposed the prayer for bail of the appellant, however, after going through the post-mortem report, learned Special P.P. does not point out multiple injuries on the head of the deceased.

Considering the facts and circumstances of the case, wherein this Court has noticed from the materials on the record that in the present case the place of occurrence itself is shown at the door of the appellant and there are general and omnibus allegations against all the accused persons, allegation of giving assault on the head of the deceased has been made simultaneously against the three named accused persons after saying that initially the seven named accused persons started assaulting the father of the informant, the post-mortem report is not corroborating the assault by corresponding injuries, as also the co-accused has been granted bail by learned coordinate Bench of this Court in Cr.Appeal (SJ) No. 3188/2021, in the circumstances this Court

sets-aside the impugned order and directs release of the appellant 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 (Prevention of Atrocities) Act, Saran at Chapra in connection with Baniyapur P.S. Case No. 91 of 2021, subject to the condition as laid down under Section 437 (3) Cr.P.C.

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)

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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'.