

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.41 of 2021

Arising Out of PS. Case No.-431 Year-2019 Thana- ATRI District- Gaya

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1. KABIR KHAN @ KAVIR KHAN S/o Late Bakar Ali Khan
 2. Samsher Khan @ Md. Shamsheer Alam S/o Kabir Khan @ Kavir Khan
Both are R/o Village- Dihuri, P.S.- Atari, District- Gaya.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Manindra Kishore Singh, Adv
For the Respondent/s : Mr.Sanjeev Kumar, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

2 03-03-2021 Let the defects be removed within four weeks.

Heard learned counsel for the parties.

This is an appeal under Section 14(A)(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the refusal of prayer for bail by order dated 09.09.2020 in B.P.No.225 of 2020 arising out of Atri P.S.Case No.431 of 2019 passed by the learned Exclusive Special Judge, S.C./S.T., Gaya, registered under Sections 302,120(b),201/34 of the Indian Penal Code and Section 3(i)(r)(s)(u)of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The son of the informant left the house on 28.09.2019, however did not return. Thereafter he was being



searched with the near relatives, however his dead body was found and FIR was lodged on 06.10.2019. Suspicion is there against the appellants who have committed the murder as the appellants had threatened in the past to the deceased.

Learned counsel for the appellants submits that the impugned order would reveal that there is no eye witness of the occurrence including the informant and only considering the statement of the hearsay witnesses, prayer for bail has been refused. His contention is that suspicion howsoever strong cannot take the place of proof. Appellants are in custody since 09.09.2020. Investigation of the case is already complete. Appellants have got no criminal antecedent and are ready to cooperate with the trial.

Learned counsel for the informant opposed the prayer for bail on the ground that co-accused-Kedar Manjhi has been refused bail by a Coordinate Bench of this Court on 02.02.2021 in Cr. Appeal (SJ) No.2131 of 2020 considering 164 Cr.P.C. statement of one Shaukeen Manjhi.

The order dated 02.02.2021 passed in Cr. Appeal (SJ) No.2131 of 2020 whereby prayer for bail to co-accused-Kedar Manjhi was refused by a Coordinate Bench of this Court had noticed that statement of Shaukeen Manjhi was not



recorded by the police under Section 161 Cr.P.C.

If Shaukeen Manjhi would have seen the occurrence, there was no reason to not mention it in the FIR lodged after days of the murder. The belated evidence coming during investigation of the case to rope the accused persons should not come in the way of consideration of prayer for bail of an undertrial prisoner. Hence, in my view, there is lack of sufficient ground for further detention of the appellants as undertrial prisoners.

Accordingly, the appellants, above named, are directed to be released on bail on furnishing bail bond of Rs.20,000/- (Twenty Thousand) each with two sureties of the like amount each to the satisfaction of the learned Court-below where the case is pending in connection with the aforesaid case, with condition that both bailors shall be resident of territorial jurisdiction of the learned court below and further the appellants shall fully cooperate with the investigation/trial of the case and also the appellants shall not leave the country without permission of the learned Trial Court, failing which the court below shall be at liberty to cancel the bail bond of the appellants.

Accordingly, the impugned order is set aside and



this appeal stands allowed.

(Birendra Kumar, J)

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