

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3564 of 2021**

Arising Out of PS. Case No.-107 Year-2019 Thana- DUMRAO District- Buxar

Santosh Kumar Mishra S/O Late Jagdish Mishra R/O Village-Mathila, P.S-
Koran Sarai, District-Buxar.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr.Ajit Kumar, Advocate

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

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

5 27-10-2021 Heard Mr. Ajit Kumar, learned counsel for the

appellant and Ms. Usha Kumari – 1, learned Special Public

Prosecutor for the State.

Appellant, in the present case, is seeking setting
aside of the order dated 23.07.2021 passed by learned
Additional District & Sessions Judge – 1st, Buxar in
connection with SC/ST Case No. 146/2020 arising out of
Dumraon P.S. Case No. 107 of 2019 registered for the
offence under Section 406, 420 of the Indian Penal Code,
later on Section 467, 468, 471, 120(B) of the Indian Penal
Code and Section 3(r)(s) of Scheduled Castes and
Scheduled Tribes (Prevention of Atrocities) Act was added,
by which the prayer of the appellant for his release on bail
has been rejected. The appellant is in custody since



05.01.2021.

As per the prosecution story, this appellant being an Advocate filed a case in the Railway Claims Tribunal, Patna Branch (in short the 'Tribunal') on behalf of one Lalan Pasi for compensation under Section 125 and Section 16 of Railway Act. The learned Tribunal by its order dated 03.01.2017 allowed claim of said Lalan Pasi and directed to transfer Rs. 8 Lakhs in the bank account and interest at the rate of 9% was also to be given to the claimant. A sum of Rs. 4 Lakhs was to be transferred in the account of Smt. Sanjhariya Devi (mother of the deceased). Out of this amount 30% was to be deposited as fixed deposit for three years. The petitioner was directed as an Advocate to furnish the saving account details of his client Sri Lalan Pasi and Smt. Sanjhariya Devi. Accordingly a joint account was opened in their name and in the said account a sum of Rs. 10,52,000/- was transferred on 11.09.2017.

It further appears from the materials on the record that this appellant taking advantage of his position as an Advocate of the victims/claimants encashed Cheque No. 690073 and withdrew a sum of Rs. 5,50,000/-, accused no.



2 Geeta Devi, who is wife of this appellant, withdrew a sum of Rs. 4,50,000/- by encashing Cheque No. 690070 from the joint account of Sri Lalan Pasi and again this appellant withdrew a sum of Rs. 52,000/- vide Cheque No. 690061. The amount was awarded as compensation to Lalan Pasi and Sanjhariya Devi on account the death of their only son Gorakh Pasi. In this manner the appellant robbed his clients.

In course of argument, learned counsel for the appellant submits that appellant is an Advocate and he is in custody since 05.01.2021, investigation against him is complete, thus, he may be released on bail. His wife Geeta Devi has already been granted bail.

Ms. Usha Kumari -1, learned Special Public Prosecutor for the State opposed the prayer for bail of the appellant when the matter was taken up for consideration yesterday. It was submitted that the act of the appellant being an Advocate is highly condemnable and the allegation against him is serious in nature when it is considered from the point of view of the professional ethics of an Advocate and the duty cast upon him towards his client.

Having looked into the seriousness of the



allegations and the severity of the punishment in such cases of misappropriation of money and breach of trust, this court wanted to know from learned Advocate for the appellant as to whether the appellant would be ready to return the entire amount which he has encashed from the joint account of his clients, learned counsel for the appellant took time to seek instruction and today he has informed that after his release on bail the appellant may return a sum of Rs. 5 Lakhs. Despite repeated caution made to learned counsel for the appellant that the appellant being an Advocate must come out with a fair stand even at this stage, there is no change of stand. In such circumstance, where this Court has noticed from the materials on the record that the appellant being an Advocate has indulged in this practice and the allegation is that of committing a breach of trust being an attorney and the appellant is not ready to return the money which belonged to his clients as a compensation money on account of death of their only son, this Court is not inclined to interfere with the impugned order.

The prayer for bail is, thus, refused.

Let a copy of this order be sent to the Bihar State



Bar Council, Patna for bringing to their notice the kind of allegations against the petitioner and appropriate action which the competent authority of the Bihar State Bar Council may take in accordance with law.

The appeal stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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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'.

