

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL APPEAL (SJ) No.81 of 2021**

Arising Out of PS. Case No.-19 Year-2020 Thana- BITHAN BAZAR District- Samastipur

MD NASRUDDIN @ NASRUDDIN, S/o Md. Kari, Resident of Village-
Harhitekbajpur, P.S-Bithan, District-Samastipur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr.Rashmi Bharti, Advocate

For the Respondent/s : Mr. Sadanand Paswan, Special P.P.

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

6 07-07-2021 Learned counsel for the appellant undertakes to remove all the defects as pointed out by office within four weeks after start of normal functioning of the Court.

Heard learned counsel for the appellant and Mr. Sadanand Paswan, learned Special P.P. for the State.

Appellant in the present case is seeking to set aside the order dated 20.08.2020 passed by learned 1st Additional District and Sessions Judge-cum-Special Judge, SC/ST Act, Samastipur in connection with Bithan P.S. Case No. 19 of 2020, G.R. no. 132 of 2020 registered for the offences punishable under Sections 3(2) (va) of the Scheduled Castes and Scheduled Tribes Act and 27 of the Arms Act whereby and whereunder his prayer for regular bail was rejected.

Learned counsel for the appellant submits that in the



present case the informant has lodged the present F.I.R. on 29.01.2020 with regard to the alleged occurrence which took place on 27.01.2020, the fardbeyan has been recorded on the basis of the information received by him from one Mr. Rakesh Kumar.

Learned counsel submits that said Rakesh Kumar who was said to be with the deceased is not the informant, he is also not a witness in the case. The appellant is not named in the F.I.R., however, in course of investigation the name of the appellant has been brought on the basis of the tower location of the area connected with his mobile. It is her submission that the alleged incident took place on road side which is public domain and the area is open to the general public.

Learned counsel further submits that there is no eye witness to the occurrence and Rakesh Kumar who was said to be with the deceased has not identified the accused persons who fired upon the father of the informant. It is stated that in the post-mortem report there are seven injuries which are entry and exit wounds and it suggests that the statements extracted from the appellant in Police custody as confessional statement is not corroborated from the post-mortem report. In the confessional statement, Police has extracted the statement that at least five persons had fired upon the deceased.

Mr. Sadanand Paswan, learned Special P.P. for the State



has relied on the confessional statement of the appellant as according to him in the confessional statement the appellant has stated that about five shots were fired upon the deceased and the first shot was fired by one Ajay Mukhiya.

Having regard to the facts and circumstances of the case, considering the aforesaid aspects of the matter, the delay in lodging of the F.I.R., the appellant not being named in the F.I.R. and then the person who was allegedly present with the deceased is not identifying the appellant and except the confessional statement which has been extracted in Police custody no other material having been brought before this Court, this Court is inclined to set aside the impugned order and directs release of the appellant on bail, let the appellant above named be released on bail on furnishing of 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 District and Sessions Judge-cum-Special Judge, SC/ST Act, Samastipur in connection with Bithan P.S. Case NO. 19 of 2020/G.R. No. 132 of 2020, subject to the condition as laid down under Section 437 (3) Cr.P.C. as under :

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the



commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

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)

vats/-

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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'.

