

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.280 of 2021**

Arising Out of PS. Case No.-611 Year-2020 Thana- SAHARSA District- Saharsa

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1. RAJESH SAH S/O CHANDESHWARI SAH @ BABAJI RESIDENT OF VILLAGE-THAKUR TOLA, WARD NO 02, PS AND DIST SAHARSA
 2. NIDHI DEVI W/O RAJESH SAH RESIDENT OF VILLAGE-THAKUR TOLA, WARD NO 02, PS AND DIST SAHARSA

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Pramod Mishra

For the Respondent/s : Ms Usha Kumari No. 1 Spl. P.P.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

3 02-08-2021 Heard Mr. Pramod Mishra, learned counsel for the appellants and Smt. Usha Kumari, learned Special Public Prosecutor for the State.

The appellants have challenged the order dated 19.10.2020 passed by the learned Sessions Judge -III-cum-Special Judge, Saharsa in Anticipatory Bail Application (A.B.A.) No. 508 of 2020 arising out of Saharsa Sadar P.S. Case No. 611 of 2020, whereby the prayer made on behalf of the appellants for grant of anticipatory bail for the offences under Sections 147, 148, 149, 341, 323, 324, 302, 504 and 506 of the Indian Penal Code and Section



3(1)(r)(s) and 2(2)(va) of SC/ST Act has been rejected.

The accusation in the First Information Report is that when the husband of the informant protested against the accused persons having plucked vegetables from his garden, he was assaulted. Next day, his dead body was recovered. A threatening was given on that day that he shall be killed. On the next day of the occurrence, the dead body of the deceased was found. There are cut marks on the neck of the deceased. It has, therefore, been alleged that the appellants have killed the deceased.

Learned counsel for the appellants has submitted that a day prior to the dead body of the deceased having been found, there was some dispute between the appellants and the deceased. However, that itself cannot be the basis for arriving at the conclusion that the appellants have taken part in the killing of the deceased.

Considering this aspect of the matter, case diary was called for and the appellant no. 2, being a lady, was granted provisional bail.

Learned counsel for the appellants has also



submitted that except for the same statement in the F.I.R. being repeated during the investigation through the mouth of other witnesses, no other evidence has been collected against the accused persons including the appellants.

However, regard being had to the fact that one of the male accused persons of this case has been granted regular bail by a Bench of this Court, I am not inclined to exercise my discretion to grant anticipatory bail to appellant no. 1.

His prayer for interfering with the order refusing to grant anticipatory bail to him, is rejected.

Should he surrender before the Court below and seek bail, the court below shall take into account that similarly situated accused persons have been granted bail by a co-ordinate Bench of this Court and shall pass order in accordance with law, without being prejudiced by the fact that the present petition on his behalf has not been entertained.

So far as the appellant no. 2/ Nidhi Devi is concerned, regard being had to her gender and there being



omnibus allegation against her and that also based on suspicion, the provisional granted to her vide order dated 25.06.2021 is hereby confirmed.

The appellant no. 2 shall remain on the same bail bonds.

The appeal stands disposed of accordingly.

(Ashutosh Kumar, J)

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