

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.5895 of 2019

Arising Out of PS. Case No.-200 Year-2017 Thana- KONCH District- Gaya

JITENDAR KUMAR MISHRA @ JITENDRA MISHRA Son of Late Nargish
Mishra Resident of Village - Utarain, P.S.- Konch, District - Gaya.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Md. Javed Jafar Khan

For the Respondent/s : Mrs.Usha Kumari 1

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

5 15-03-2021 Heard both sides.

The appellant filed this appeal under Section 14(A)(2) of the S.C./S.T. Act against the order dated 13.11.2019 passed by learned Special Judge, SC/ST, Gaya by which the anticipatory bail of the appellant has been rejected in Konch P.S. Case No.200 of 2017 registered under Sections 302 and 34 of the Indian Penal Code and under Section 2(v) of the S.C./S.T. Act.

The informant, the son of the deceased, alleged that while his father, Parmeshwar Das was going to his another house where cowshed is situated and when he reached near Brahmtoli, Jitendra Mishra and other accused persons assaulted him with hard and blunt object on back side of his head and his father died. The informant disclosed that Mukesh Das got information from Sonu Kumar, son of Dharmdeo Das about the occurrence. Mukesh Das informed him about the occurrence.



The learned counsel for the appellant submits that informant is not an eye witness of the occurrence. Mukesh Das is also said to have received information from Sonu Kumar. Sonu Kumar is also not an eye witness of the occurrence and he is hearsay witness. It is further submitted that police after investigation found the accusation against the appellant false and submitted chargesheet against Vishal Kumar, Niraj Paswan and Dharmendra Das but Court in seisin of the case also took cognizance against the appellant although there is no material to show that the appellant committed the crime of murder of Parmeshwar Das. It is further submitted that similarly situated three accused persons namely, Krishna Paswan, Rajesh Paswan and Umesh Paswan have been granted anticipatory bail by order dated 09.12.2019 passed in Cr. Appeal(SJ) No.5402 of 2019. The case of the appellant stands on the same footing.

Learned Special P.P. opposed the prayer for bail but could not be able to dispute the fact that similarly situated three co-accused have already been granted anticipatory bail by a Co-ordinate Bench of this Court.

Having considered the submissions of both sides and on perusal of the case diary, it appears that informant is not an eye witness of the occurrence. He got information of occurrence



from Mukesh Das. Mukesh Das is also said to have got information from Sonu Kumar but from perusal of para 8 and 9 of the case diary, it appears that Mukesh Das and Sonu Kumar are hearsay witnesses. The police also found the accusation against the appellant and three other accused persons false. On this basis, three accused persons namely, Krishna Paswan, Rajesh Paswan and Umesh Paswan have been granted anticipatory bail. The case of the appellant stands on the same footing. Thus, I find that the appellant deserves anticipatory bail.

Taking into consideration the facts aforesaid, the appeal is allowed, the order dated 13.11.2019 is set aside and let the appellant, above named, in the event of his arrest or surrender within a period of four weeks be released on bail on furnishing bail bond of Rs.10,000/-(Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Special Judge, SC/ST(POA) Act, Gaya in connection with Konch P.S. Case No.200 of 2017, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

(Prabhat Kumar Jha, J)

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