

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (SJ) No. 5899 of 2019**

Arising Out of PS. Case No.-69 Year-2019 Thana- CHANDI District- Nalanda

Bachcha Chaudhary @ Bacheha Choudhary @ Sanjeev Kumar, aged about 20 years, Male, Son of Raju Chaudhary, Resident of Village- Satnag, PS- Chandi, District- Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

|                     |   |                               |
|---------------------|---|-------------------------------|
| For the Appellant/s | : | Ms. Vaishnavi Singh, Advocate |
| For the State       | : | Ms. Usha Kumari No. 1, APP    |

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**  
**ORAL JUDGMENT**

**Date : 28-09-2021**

Heard Ms. Vaishnavi Singh, learned counsel for the appellant and Ms. Usha Kumari No. 1, learned Special Public Prosecutor (hereinafter referred to as the 'Special PP) for the State.

2. The present appeal is directed against the order dated 05.12.2019 passed by the learned 1<sup>st</sup> Additional Sessions Judge, Nalanda at Biharsharif in ABP No. 2969 of 2019 by which prayer for anticipatory bail of the appellant has been rejected.

3. The appellant apprehends arrest in connection with Chandi PS Case No. 69 of 2019 dated 24.02.2019, instituted under Sections 302/34 of the Indian Penal Code, 1860 and 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'SC/ST Act').



4. The allegation against the appellant and three other named accused is of killing the brother of the informant.

5. Learned counsel for the appellant submitted that as per the FIR, the brother of the informant i.e., the deceased, was called by all the four accused, including the appellant, at 7:00 PM on 22.02.2019 and despite the informant and his family members looking for him, he could not be located and the next morning on 23.02.2019 at 5:00 AM, when the informant had gone to attend the call of nature, he came to know that the dead body of his brother has been found. It has been alleged that earlier the accused had threatened to kill the deceased as he was opposing their trade in liquor.

6. Learned counsel for the appellant submitted that without there being any truth in the allegation, on mere suspicion and also to humiliate him, the present FIR has been lodged, which would be apparent from the fact that a day prior to lodging of the present FIR, the informant soon after recovery of the dead body of his brother, which was found hanging from a tree, had lodged a UD case with the police in which there is not even a whisper of any suspicion against the appellant, much less allegation about any threat being issued by the accused. It was further pointed out that in the present FIR, the fact of lodging a UD case a day prior



has not even been indicated. Learned counsel submitted that the other three co-accused, who have been arrested, have been granted bail by co-ordinate Benches and the fact that of a UD case being filed by the informant a day prior to the lodging of the present FIR has been noticed. In support thereof, learned counsel has forwarded web copies of the order dated 06.02.2020 by which Vijendra Chaudhary has been granted bail by a co-ordinate Bench in Cr. Appeal (SJ) No. 3391 of 2019; order dated 05.11.2020 by which Mantu Gope has been granted bail in Cr. Appeal (SJ) No. 1665 of 2020 and order dated 01.12.2020 by which Raju Choudhary has been granted bail in Cr. Appeal (SJ) No.1348 of 2020. It was submitted that the appellant having no criminal antecedent is being harassed and as the version in the FIR is falsified and discredited by the conduct of the informant himself and, thus, the bar of Section 18 of the SC/ST Act would not apply.

7. Learned APP submitted that as per the allegation, the accused, including the appellant, had threatened the deceased. However, he could not controvert the fact that there was a UD case registered by the informant a day prior upon recovery of the body of his brother and the present FIR has been filed one day after that in which there is no indication of the informant earlier filing a UD case.



8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in view of the conduct of the informant of not making any allegation or even raising any suspicion against the appellant in the UD case upon recovery of the body of his brother and thereafter only later on the next day lodging the present case in which suspicion has been raised stating that the appellant along with three others had threatened the deceased, as also the fact that he does not have any other criminal antecedent, the Court is inclined to allow the prayer for pre-arrest bail.

9. Accordingly, in the event of arrest or surrender before the Court below within six weeks from today, the appellant be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned 1<sup>st</sup> Additional Sessions Judge, Nalanda at Biharsharif in Chandi PS Case No. 69 of 2019 subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 and further, (i) that one of the bailors shall be a close relative of the appellant, (ii) that the appellant and the bailors shall execute bond and give undertaking with regard to good behaviour of the appellant and (iii) that he shall co-operate with the Court and police/prosecution. Any violation of the terms



and conditions of the bonds or the undertaking or failure to co-operate shall lead to cancellation of his bail bonds.

10. It shall also be open for the prosecution to bring any violation of the foregoing conditions by the appellant, to the notice of the Court concerned, which shall take immediate action on the same after giving opportunity of hearing to the appellant.

11. Accordingly, the order impugned is set aside and the appeal stands allowed.

**(Ahsanuddin Amanullah, J.)**

P. Kumar

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