

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.423 of 2022

Arising Out of PS. Case No.-244 Year-2020 Thana- UDWANTNAGAR District- Bhojpur

KAMLESH OJHA Son of Late Abhimanyu Ojha Resident of Village - Araura,
P.S.- Udawantnagar, Distt.- Bhojpur.

... .. Appellant/s

Versus

1. THE STATE OF BIHAR
2. Dharamshila Kunwar wife of Late Guddu Ram Resident of village Araura,
P.S.- Udwant Nagar Dist- Bhojpur

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. P.K.Shahi, Sr. Adv. Mr. Sheo Jee Mishra, Adv.
For the State	:	Ms. Usha Kumari 1, Spl.P.P.
For the Informant	:	Mr. Rajendra Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

5 27-07-2022 Heard learned Senior counsel for the appellant,

learned Special P.P. for the State and learned counsel for the

respondent no.2.

The appellant has renewed his prayer for bail in a

case registered under sections 302 and 34 of the Indian Penal

Code, section 27 of the Arms Act and section 3(1)(r) and 3(2)(v)

of the S.C. & S.T. (Prevention of Atrocities) Act.

As per the allegation in the F.I.R., the appellant

herein is stated to have fired hitting Guddu Ram leading to his

death.

It is submitted by learned Senior counsel appearing

for the appellant that the appellant has been falsely implicated in

the case. The informant who was examined as a prosecution



witness in the trial has not supported the prosecution case and has been declared hostile. The appellant is in custody since 11.7.2020 and still only one out of the six chargesheet witnesses has been examined in the trial court. There is no chance in the trial concluding in the near future. The appellant undertakes to cooperate in the trial.

The appeal is opposed by learned Special P.P. for the State and learned counsel appearing for the respondent no.2. It is submitted by learned counsel for the respondent no.2 that the appellant is the assailant of the deceased and as such, the prayer for bail be rejected. It is further submitted that the prosecution will examine its witnesses within the time fixed by this Court.

Having heard learned counsel for the parties and taking into consideration the submissions made, it transpires that the appellant has remained in custody for two years. The prayer for bail of the appellant although was vehemently opposed by learned counsel appearing for the respondent no.2 in the instant appeal, however, when it came to the informant-respondent no.2 deposing in the court below in the trial, she did not support the prosecution case and was declared hostile.

In view of the facts and circumstances of the case, the



appellant having remained in custody for more than 2 years together with the informant having been examined in the learned court below as a prosecution witness and having been declared hostile, the Court is inclined to allow the appeal.

The appeal is allowed and the order impugned dated 7.1.2022 passed in Udawantnagar P.S. Case no.244 of 2020 by the learned 1st Additional Sessions Judge, Bhojpur, Ara, is set aside

The appellant is directed to be enlarged on bail in connection with Udawantnagar P.S. Case no.244 of 2020 on furnishing bail bond of Rs.10,000/ (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned 1st Additional Sessions Judge, Bhojpur, Ara on the following condition:

(i) the appellant shall remain physically present in Court on each date of the trial and shall cooperate in the trial.

In case, the learned trial court is of the opinion that the trial is being delayed due to non-cooperation on part of the appellant, the learned trial court may cancel the bail bond of the appellant and take him into custody till conclusion of the trial.

(Partha Sarthy, J)

Saurabh/-

U		T	
---	--	---	--

