

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.597 of 2022

Arising Out of PS. Case No.-461 Year-2021 Thana- SAHARSA SADAR District- Saharsa

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KANHAIYA KUMAR DWIVEDI @ KANHAIYA DUBEY Son of Late
Heera Dubey @ Hir Lal Dwivedi. A resident of Village/Mohalla- Naya Bazar,
Bengha Bye-Pass Road, Ward No. -3, P.S.- Saharsa, District- Saharsa.

... .. Appellant/s

Versus

1. The State of Bihar Bihar
2. Sunita Devi W/o Shri Umesh Paswan A resident of Village- Sarahi, Ward
No. -3, P.S.- Saharsa, District- Saharsa

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Kamal Kishore Singh
For the Respondent/s : Mr.Sadanand Paswan
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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 08-09-2022

Let the defect(s), as pointed out by the office, be
removed within a period of four weeks from today.

Heard learned counsel for the appellant and learned Spl.

P.P. for the State as well as learned counsel for the informant.

The instant appellant has filed the instant appeal against
the order dated 20.01.2022 passed by the learned Additional
Sessions Judge-IIIrd-cum-Special Judge, Schedule Caste and
Schedule Tribes (Prevention and Atrocities) Act, Saharsa in
connection with Special Case No. 60 of 2021 arising out of
Saharsa Sadar P.S. Case No. 461 of 2021 registered under Sections
147, 148, 149, 341, 323, 307, 447, 429, 504 and under Section 3(i)



(r)(s) of SC/ST Act whereby and whereunder the prayer for bail of the appellant was rejected.

As per prosecution case, 14 accused persons including appellant and 5-10 unknown person came with arms in their hands and started firing indiscriminately for 20-25 minutes. It is further alleged that father in law of informant sustained gun shot injury in his leg and one buffalo also sustained injury.

Learned counsel for the appellant submits that appellant is in custody since 09.01.2022. Appellant bears two criminal antecedent. Charge sheet has already been submitted in the case and there is no likelihood of tampering with the prosecution evidence. Learned counsel further submits that appellant has falsely been implicated in this case due to land dispute. There is no specific allegation against the appellant in F.I.R. Allegation against the appellant is general and omnibus in nature. There is a case and counter case between the parties for the same date of occurrence, in this context, facts are generally exaggerated. Co-accused Manoj Dubey and Pawan Dubey have already been granted bail vide Cr. Appeal (SJ) No. 3599 of 2021 by a co-ordinate bench of this Court and the case of present appellant stands on similar footing.

The learned Spl.P.P. for the State vehemently opposes the prayer for bail of the appellant .



Considering the facts and circumstances of the present appeal as well as period of custody, charge-sheet has already been submitted and there is no likelihood of tampering with the prosecution evidence, argument advanced on behalf of the parties and also taking into consideration the material available on record, the order dated 20.01.2022 passed by the learned Additional Sessions Judge-IIIrd-cum-Special Judge, Schedule Caste and Schedule Tribes (Prevention and Atrocities) Act, Saharsa is set aside and present appeal is allowed. The appellant is directed to be enlarged on bail in connection with Special Case No. 60 of 2021 arising out of Saharsa Sadar P.S. Case No. 461 of 2021 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 Additional Sessions Judge-IIIrd-cum-Special Judge, Schedule Cast and Schedule Tribes (Prevention and Atrocities) Act, Saharsa, subject to following conditions:-

(i) One of the bailors shall be either father or mother or sister or brother or wife or the person who has sworn the affidavit in bail application.

(ii) Appellant will co-operate in trial and will remain present on all dates and absence for two consecutive dates without



appropriate permission would be a ground for cancellation of bail by the learned Trial court itself.

(iii) If the appellant tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

(Alok Kumar Pandey, J)

amitkr/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	19.09.2022
Transmission Date	19.09.2022

