

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.759 of 2022

Arising Out of PS. Case No.-111 Year-2016 Thana- BIRPUR District- Supaul

Yogendra Mukhiya S/o Late Mahadev Mukhiya Resident of Village-
Bishanpur- Ghanshyam, Mohalla- Gori, P.S.- Balua Bazar, District- Supaul.

... .. Appellant/s

Versus

1. The State of Bihar
2. Arjun Kumar Paswan Late Harilal Paswan Resident of Tulsi Patti(Nath patti), Ward No.-12, P.S.-Balua Bazar, District-Supaul

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Kumar Goutam, Advocate
For the Respondent/s : Mr. Sadanand Paswan, Spl. P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

5 15-09-2022 1. Heard learned counsel for the appellant, learned
Special P.P. for the State and learned counsel for the informant
on point of admission and on merit also.

2. The appellant has preferred the present appeal under Section 14A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'the Act') against the order dated 21.01.2022 passed by the learned Additional District and Sessions Judge-I-cum-Special Judge (SC/ST), Supaul in connection with Birpur P.S. Case No. 111 of 2016 registered under Sections 147, 48, 149, 302, 201 and 120(B) of the Indian Penal Code and Section 3(ii) (V) of SC/ST Act.

3. Present appeal is well within limitation as



prescribed under Section 14A(3) of the Act.

4. It is submitted by learned Spl. P.P. that victim/informant duly informed through S.P., Supaul but failed to appear.

5. Appellant is named in F.I.R. and is in custody since 06.12.2021.

6. The allegation against the appellant is to commit murder of father of the informant, along with other co-accused persons for previous long-standing enmities.

7. Learned counsel for the appellant submitted that though appellant is named in F.I.R. but informant nowhere appears an eye witness of the occurrence from the bare perusal of F.I.R. It can be easily gathered from the face of F.I.R. that the basis of naming appellant and other co-accused and also explaining the manner of occurrence is based upon unexplained/unknown source. It is further submitted that it is not a case where murder weapon recovered in furtherance of confessional statement, rather it was found on the place of occurrence itself. It is also submitted that no scientific evidence/forensic report gathered during the course of investigation which may connect the appellant with present occurrence of murder. It is submitted that similarly situated co-



accused person has already been granted bail by one of the learned co-ordinate Bench of this Court through Cr. App. No. 944 of 2016 vide order dated 16.01.2017. While concluding the argument, it is submitted that from the allegation as raised against this appellant, nothing can be gathered which may invite atrocities within the meaning of the Act and moreover, investigation of this case is completed, charge-sheet is submitted and, as such, there is no chance of tampering with the evidence.

8. Learned counsel for the appellant submitted that if insult is not caused to complainant/informant on the basis of caste, no case is made out under the Act, as it was held in ***State of Madhya Pradesh Vs. Parasram @ Purushottam, as reported in 2015 (153) AIC 276.***

9. Learned Special P.P., while opposing the prayer of bail, fairly conceded that informant is not appearing eye witness of the occurrence, as per F.I.R.

10. In view of the facts and circumstances, as mentioned above, as informant is not appearing eye witness, where entire allegation is based upon suspicion, where nothing surfaced during the course of investigation to connect the appellant with present allegation, let the appellant, above named, is directed to be released on bail in connection with



Birpur P.S. Case No. 111 of 2016 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Additional District and Sessions Judge-I-cum-Special Judge, Supaul/concerned Court, subject to the following conditions:

“(i) Accused/Petitioner shall cooperate in the trial and shall be physically present on each and every date before the Trial Court till conclusion of the trial and exemption from physical appearance be allowed by the Trial Court, only on medical ground of the petitioner duly supported by the documents.

(ii) That one of the bailors shall be Shailendra Kumar Mukhiya, who is the son-in-law of the petitioner and deponent of the present bail petition.”

11. Accordingly, impugned order dated 21.01.2022 is set aside.

12. Hence, appeal stands allowed.

(Chandra Shekhar Jha, J)

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