

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.860 of 2022**

Arising Out of PS. Case No.-132 Year-2021 Thana- BIND District- Nalanda

VIKASH KUMAR Son of Ram Ishwar Saw @ Iswhar Saw Resident of
Village - Kathrahi, P.S. - Bind, District - Nalanda.

... .. Appellant/s

Versus

1. THE STATE OF BIHAR Bihar
2. Nitish Kumar Son of Surendra Rai Resident of Village - Dakshni Chak, P.S.
- Athamalgola, District - Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Binod Kumar Sinha, Adv.
For the State	:	Mrs.Usha Kumari 1, S.P.P.
For the Informant	:	Mr. Ram Pravesh Nath Tiwari, Adv.

**CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT**

Date : 21-09-2022

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 Special Public Prosecutor for the State assisted by learned counsel for the informant.

The appellant has filed the instant appeal against the impugned order dated 02.02.2022 passed by the learned Additional Sessions Judge-III-cum Special Judge, SC/ST, Bihar Sharif, Nalanda whereby the prayer for bail of the appellant in connection with Bind P.S. Case no. 132 of 2021 registered under sections 302, 307, 394 of the Indian Penal Code, 27 of the Arms Act and Section 3(i)(r)(s)/3(2)(v) of the SC & ST (POA) Act was rejected.



As per prosecution case, the informant and the deceased used to drive truck and on the fateful day, deceased Ranju Paswan was shot dead by three miscreants and they took Rs. 12,000/- from the deceased. The miscreants also fired upon the informant when he tried to run away. Hence, the FIR has been lodged against unknown.

Learned counsel for the appellant submits that appellant is not named in the FIR and during course of investigation the name of appellant has been surfaced in para-9 and 10 of the case diary. Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in this case. He further submits that no incriminating article has been recovered from the person or possession of the appellant. No TIP has been conducted. He further submits that during the course of investigation police seized the mobile of appellant and other accused persons but even as per CDR of mobile of the appellant and other co-accused persons, neither the location of mobile showed the presence of appellant at the place of occurrence nor on the fateful day there had been any conversation of the appellant with the accused persons. He further submits that in his deposition recorded before the trial court the informant did not identify the appellant and has not named the appellant in his deposition. He further submits that



co-accused Deepak Kumar @ Abhishek Kumar has already been granted bail by the co-ordinate Bench of this court vide Cr. Appeal (SJ) No. 937 of 2022 and the case of present appellant stands on similar footing. He further submits the appellant is in custody since 21.10.2021 and bears no criminal antecedent. Charge sheet has been submitted in this case and there is no likelihood of tampering with the prosecution evidence.

The learned Special Public Prosecutor for the State and learned counsel for the informant vehemently opposed the prayer for bail of the appellant.

Considering the facts and circumstances of the case, period of custody, charge sheet has already been submitted in this case and there is no likelihood of tampering with the prosecution evidence, argument advanced on behalf of both sides, keeping in view clean antecedent of the appellant and also taking into consideration the material available on record, impugned order dated 02.02.2022 is hereby set aside and present appeal is allowed.

The appellant is directed to be enlarged on bail in connection with Bind P.S. Case no. 132 of 2021 on furnishing bail bond of Rs. 20,000/ (Rupees Twenty thousand) with two sureties of the like amount each to the satisfaction of the learned



Additional Sessions Judge-III-cum Special Judge, SC/ST,
Biharsarif, Nalanda, 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)

shahzad/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27.09.2022
Transmission Date	27.09.2022

