

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.900 of 2022**

Arising Out of PS. Case No.-551 Year-2021 Thana- CHANPATIA District- West Champaran

Rajkumar Sah, S/o Late Shiv Sahu @ Late Shivjee Sahu Resident of Station
Road Chanpatiya, Ward No. 10, P.S.- Chanpatiya, District- West Champaran

... .. Appellant/s

Versus

1. The State of Bihar
2. Pushpanjali Kumari, D/o Late Chavishankar Ram, Resident of Station Road
Chanpatiya, P.S.- Chanpatiya, District- West Champaran

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Bimlesh Kumar Pandey, Advocate
For the State	:	Mr.Binay Krishna, Spl.PP
For the Informant	:	Mr.Shiv Kumar Dwivedy, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

Date : 04-08-2022

Heard learned counsel for the appellant and learned
Spl.PP for the State.

Let the defect (s), as pointed out by the office, be
removed within a period of four weeks from the date of
resumption of physical filing and physical removal of defect.

This is an appeal under Section 14(A)(2) of the
Scheduled Castes and Scheduled Tribes (Prevention of
Atrocities) Act, 1989 against the refusal of prayer for bail by
order dated 04.02.2022 passed by the learned Additional District
and Sessions Judge-1st-cum-Special Judge, SC/ST, Bettiah,
West Champaran in connection with Chanpatiya P.S. Case No.
551 of 2021, registered for the alleged offences under Sections



147, 148, 149 and 302 of the Indian Penal Code and Sections 3 (i), (r), (s), 3(ii), (v-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

As per the prosecution case, the father of the informant was assaulted by the appellant and other co-accused persons, who died subsequently.

The learned counsel for the appellant submits that the appellant is innocent and the person who allegedly gave information to the informant's cousin about the appellant and other co-accused persons assaulting the father of the informant, in his statement recorded during investigation did not name this appellant as the assailant. Rather he named only two persons who assaulted the father of the informant. Though it has come during investigation that the deceased took away the mobile phone of the appellant and the co-accused assaulted him for compelling him to return the mobile phone, it could be due to sympathy or compassion for the appellant who is a handicapped person. There could be no application of any provisions of the SC/ST (POA), Act against this appellant since offence under Section 302 of the IPC is not attracted against him. The learned counsel further submits that the FIR also shows earlier dispute between the sides and false implication cannot be ruled out. The



learned counsel also submits that even the post-mortem report shows only two injuries on the person of the deceased and it also falsifies the allegation of assault by five persons. Charge-sheet has been submitted in this case and the appellant is in custody since 11.11.2021.

Learned counsel appearing on behalf of the respondent no.2 as well as the learned Spl.PP opposes the prayer for bail submitting that this appellant instigated other co-accused persons, who assaulted the father of the informant and caused his death. Learned counsel for the respondents further submits that it transpired during investigation that the appellant was in the habit of gambling and lost his mobile phone to the deceased and later on for getting back his mobile phone, at his instigation, the occurrence took place.

Perused the records.

Having regard to the submissions made hereinabove and considering the fact that nothing has come on record to show that this appellant assaulted the deceased and caused his death, which allegation is specific against other co-accused persons and further considering the submission of charge-sheet along with the period of his custody, the appellant above named is directed to be released on bail on furnishing bail bond of Rs.



20,000/- (twenty thousand) with two sureties of the like amount each to the satisfaction of learned Additional District and Sessions Judge-1st-cum-Special Judge, SC/ST Act, Bettiah, West Champaran in connection with Chanpatiya P.S. Case No. 551 of 2021, subject to the conditions mentioned in Section 437(3) of the Code of Criminal Procedure and also the following conditions :

- (i) One of the bailors will be a close relative of the appellant, preferably one of the parents.
- (ii) The appellant will remain present on each and every date fixed by the court below.
- (iii) In case of absence on three consecutive dates or in violation of the terms of the bail, the bail bond of the appellant will be liable to be cancelled by the court concerned.

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

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.08.2022
Transmission Date	05.08.2022

