

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1256 of 2022

Arising Out of PS. Case No.-31 Year-2020 Thana- MAIGRA District- Gaya

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1. Rajesh Yadav, S/O Sri Anant Yadav R/O Village- Murliganj, P.S.- Maigra, District- Gaya
 2. Ashutosh Kumar @ Chhotu, S/O Late Dinesh Yadav R/O Village- Harni, P.S.- Maigra, District- Gaya

... .. Appellant/S

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Krishna Prasad Singh- Sr. Advocate Mr. Md. Javed Jafar Khan- Advocate
For the Respondent/s	:	Mr. Binay Krishna- Special P.P. Mr. Ujjawal Kumar Singh- Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 19-12-2022 Heard learned senior counsel for the appellants, learned counsel for the informant and the learned Special Public Prosecutor for the State.

The appellants have challenged the order dated 29.01.2021 passed by the learned Executive Special Judge, SC/ST Act, Gaya in connection with Maigra P. S. Case No.31 of 2020, instituted for the offences under Sections 302, 120(B), 148, 307 of the Indian Penal Code, Section 27 of the Arms Act and Section 3(2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, whereby their prayer for grant of anticipatory bail has been rejected.

The learned senior counsel for the appellants

submits that the appellant no.1 has antecedent of three cases and appellant no.2 is a person with clean antecedent and the informant alleges that on 28.08.2020 at 10.30 P.M., her husband was sitting at the door of Sohan Yadav when she heard sound of firing and came out of the house and saw 10 named accused persons including the appellants along with five unknown accused came and fired hitting Sohan Yadav, her husband and Dular Chand. Further, Sohan Yadav and her husband died during the course of treatment.

The learned senior counsel for the appellants submits that from bare perusal of the allegation as alleged in the F.I.R., it would manifest that informant is not an eye witness to the occurrence. Further, even the allegation of firing is general and omnibus in nature. It is next submitted that the informant realizing her mistake and on intervention of well-wishers, filed a compromise petition dated 01.12.2020 before the learned trial Court (Annexure-2) which further demonstrates that the F.I.R. came to be instituted.

The learned Special P. P. as well as learned counsel for the informant opposes the bail application. The learned counsel for the informant submits that in the

anticipatory bail application, it was pleaded that appellant no.1 is a person with clean antecedent and today, he received instruction to submit that he has antecedent of three cases. It is also submitted that the matter has not been compromised. It is further submitted that during the course of the investigation, it has come that AK-47 was used in the occurrence. It is also submitted that two persons have died.

The learned senior counsel rebuts the submission and submits that already a supplementary affidavit has been filed in which it has been recorded that appellant no.1 has has antecedent of three cases out of which, in one case final form has been submitted. It is next submitted that the allegations are general and omnibus in nature and he has instructions to make submission that compromise is genuine, but then for reasons best known, the learned counsel for the informant is opposing. It is also submitted that arrest is not meant for punishing the accused, but to ensure that the investigation is not hampered. It is next submitted that appellants will cooperate in the investigation and will present themselves before the Investigating Officer of the case as and when called for, for arriving at the truth.

Regard being had to the aforesaid submissions,

the order dated 29.01.2021 is set-aside.

The appeal stands allowed.

The appellants, above-named, in the event of their arrest or surrender before the learned Court below within a period of eight weeks, are directed to be released on bail on their furnishing bail-bonds in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) each with two sureties of the like amount each to the satisfaction of learned Executive Special Judge, SC/ST Act, Gaya in connection with Maigra P. S. Case No.31 of 2020, subject to the conditions laid down under Section 438(2) of the Cr.P.C.

However, in the event, if the Investigating Officer of the case files a charge-sheet connecting the appellants with the offence, then the present anticipatory bail order shall lose its effect. Further, if the Investigating Officer files an application before the learned trial Court bringing to its notice that the appellants despite giving assurance to this Court are not cooperating in the investigation or are not making themselves available when called by him, the learned trial Court shall be at liberty to cancel the bail bonds of the appellants after hearing them and to take all coercive to ensure that appellants are behind the bar.

The learned trial Court is directed to send a copy of
this order to the concerned Police Station.

(Satyavrat Verma, J)

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