

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1482 of 2022**

Arising Out of PS. Case No.-195 Year-2019 Thana- MOUZAHDIPUR District- Bhagalpur

Sudhir Choudhary, S/o Ganesh Choudhary, Resident of Village-
Shakarullachak, P.S.- Mojahidpur (Babarganj), District- Bhagalpur

... .. Appellant/s

Versus

1. The State of Bihar
2. Babita Devi, W/o Late Dinesh Choudhary, Resident of Village-
Shakarullachak, P.S.- Mojahidpur (Babarganj), District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Ranjan Kumar Jha, Advocate
For the State	:	Mrs.Usha Kumari 1, Spl.PP
For the respondent no.2	:	Mr.Dharmveer, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 20-10-2022

Heard learned counsel for the appellant and learned
Spl.PP for the State as well as learned counsel for the
informant/respondent no.2.

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

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 19.02.2022 passed by the learned 3rd Additional
Sessions Judge-cum- Special Judge (SC/ST Act), Bhagalpur in
connection with Special SC/ST Case No. 118 of 2019 arising
out of Mojahidpur (Babarganj) P.S. Case No. 195 of 2019,



registered for the alleged offences under Sections 147, 148, 149, 342, 324, 302 and 326 of the Indian Penal Code, Sections 3 (i) (r) and 3 (2) (va) of the Scheduled Castes and Scheduled Tribes Act and Section 27 of the Arms Act.

As per the prosecution case, the husband and other family members of the informant opposed eve-teasing and illicit trade of liquor by some miscreants and in retaliation thereof the appellant and other co-accused persons surrounded the husband of the informant and shot him dead.

The learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in this case due to ulterior motive, village politics, malice and grudge. From perusal of the FIR, it is also evident that the informant is herself not an eye-witness. Though the informant has stated that the appellant fired a shot on the temporal region of the husband of the informant and on his way he died but in her re-statement recorded during investigation in case diary she has named this appellant along with others who shot her husband dead. But she has not specifically stated that this appellant fired the shot on temporal region of her husband. Even the daughter of the informant namely, Simran Kumari who was accompanying her father and can be said the real eye-witness to the occurrence has



not claimed anywhere that this appellant shot upon the head of her father. Furthermore, the brother of the deceased, Bharat Bhushan Chaudhary who claimed himself to be an eye-witness has very specifically stated that co-accused Rakesh Choudhary has fired upon deceased Dinesh Choudhary and the shot hit on the temporal region of Dinesh Choudhary as a result of which he died on way to hospital. The aforesaid facts go on to show that it is a case of false accusation. Then the post-mortem report does not corroborate the prosecution story because the deceased has sustained two entry wound of firearm on the person when the prosecution is specific that the one shot was fired upon the deceased which hit the deceased on his temporal region. But the post-mortem report shows another firearm injury on the chest of the deceased and this injury remained unexplained. Learned counsel further submits that the deceased was himself a veteran criminal of the locality and many persons were inimical to him and for this reason any of his enemies might have killed him. The appellant is in custody since 16.02.2022 and the charge sheet has been submitted in this case.

Learned Spl.PP as well as learned counsel for the informant vehemently oppose the prayer for bail. Learned counsel for the informant submits that the informant has



specifically stated in her written report, on which the FIR has been registered, that this appellant fired upon the temporal region of the husband of the informant and he died due to this injury.

Perused the records.

Having regard to the facts and circumstance and submissions made on behalf of the parties and considering the subsequent facts which came up during investigation regarding the doubt over appellant who fired the fatal shot on the deceased and further finding of another firearm injury over left side chest and considering the possibility of false implication of the appellant, 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 3rd Additional Sessions Judge-cum-Special Judge (SC/ST Act), Bhagalpur in connection with Special (SC/ST) Case No. 118 of 2019 arising out of Mojahidpur (Babarganj) P.S. Case No. 195 of 2019, subject to the conditions mentioned in Section 437(3) of the Code of Criminal Procedure and also the following conditions :

- (i) The bail bond of the appellant will be accepted only after framing of charge, if not already framed.
- (ii) One of the bailors will be a close relative of



the appellant, preferably one of the parents.

(iii) The appellant will remain present on each and every date fixed by the court below.

(iv) 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	22.10.2022
Transmission Date	22.10.2022

