

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3668 of 2021**

Arising Out of PS. Case No.-174 Year-2021 Thana- KATORIYA District- Banka

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TUNTUN SAH S/o LATE MADHO SAH R/o VILLAGE-KATORIYA, P.S-
KATORIYA, DISTRICT-BANKA.

... .. Appellant/s

Versus

1. THE STATE OF BIHAR
2. Khusabu Devi Kapil Chaudhary Village and P.S..-Katoriya, District - Banka

... .. Respondent/s

=====

with

CRIMINAL APPEAL (SJ) No. 4620 of 2021

Arising Out of PS. Case No.-174 Year-2021 Thana- KATORIYA District- Banka

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SITA RAM SAH @ SITA RAM MANDAL Son of Chndrika Mandal
Resident of Village- Kathoun, P.S.- Katoriya, District- Banka.

... .. Appellant/s

Versus

1. The State of Bihar
2. Khusbu Devi Kapil Choudhary R/o Village -Katoriya Pasi Tola P.S.-
Katoriya, District -Banka

... .. Respondent/s

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Appearance :

(In CRIMINAL APPEAL (SJ) No. 3668 of 2021)

For the Appellant/s : Mr. Jitendra Kumar Giri, Advocate

For the Respondent/s : Mr. Special P.P.

For the Informant : Mr. Ajay Kumar Chakrawarti, Advocate

(In CRIMINAL APPEAL (SJ) No. 4620 of 2021)

For the Appellant/s : Md. Najmul Hodda, Advocate

For the Respondent/s : Ms.Usha Kumari 1, Special P.P.

For the Informant : Mr. Ajay Kumar Chakrawarti, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

9 04-08-2022

IN CR. APPEAL (SJ) No.3668 of 2021

1. Heard learned counsel for the appellant and learned

Special P.P. for the State as well as learned counsel for the

respondent no.2/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, 1989 (hereinafter referred to as the “SC/ST Act”) against the refusal of prayer for bail vide order dated 02.08.2021 passed by the learned Additional Sessions Judge-I, Banka, in connection with Katoria P.S. Case No. 174 of 2021 registered under Sections 302 and 34 of Indian Penal Code and Section 3(2)(v)(a) of SC/ST (POA) Act.
3. Present appeal is well within limitation as prescribed under Section 14A(3) of the Act.
4. Notice has been issued to Respondent no.2, served upon and duly represented.
5. The appellant is named in F.I.R. and is in custody since 03.07.2021.
6. The allegation against the appellant is to commit murder of husband of the informant along with other co-accused persons in the background of previous enmities.
7. Learned counsel for the appellant submitted that informant is not the eye-witness of the present occurrence and the entire allegation is on the basis of suspicion, due



to long standing land dispute. It is also submitted that nothing surfaced during course of investigation, except suspicion, which may incriminate the appellant with the present set of occurrence. It is also submitted that to pressurize the appellant to compromise in Katoriya P.S. Case No. 168 of 2021, this appellant has been falsely implicated in the present case. It is submitted that maximum incriminating circumstances surfaced, during course of investigation against petitioner is to made a call on the cell-phone of the deceased, on the date of occurrence. It is also submitted that both the parties residing in same locality and as such, it is obvious to have same mobile tower location. It is also submitted that from bare perusal of FIR, it can be safely gathered that the allegation/act of the appellant, cannot be said atrocities within the meaning of the Act. It is also submitted that appellant is a man of clean antecedent. While concluding the argument, it is submitted that investigation has been completed, for which, charge-sheet has already been submitted in this case, 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. for the State duly assisted by learned counsel for the Respondent No.2/Informant, while opposing prayer for bail, fairly conceded the fact that the informant is not the eye-witness of the present occurrence, as per FIR.
10. In view of the submissions, as made above, as the informant is not the eye-witness of the present occurrence and nothing incriminating surfaced during course of investigation, which may connect the petitioner, *prima-facie*, with the present set of occurrence, where petitioner is a man of clean antecedent coupled with the fact that charge-sheet has already been submitted, let the appellant, above named, is directed to be released on bail in connection with Katoria P.S. Case No. 174 of 2021 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 Sessions Judge-1st, Banka/concerned court, subject to the following



conditions:

“(i) Appellant 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 appellant, duly supported by the documents.

(ii) That one of the bailors shall be Rani Devi, who is the sister of the appellant and deponent of the present appeal.”

11. Accordingly, impugned order dated 02.08.2021 is set aside.
12. Hence, appeal stands allowed.

IN CR. APPEAL (SJ) No.4620 of 2021

1. Heard learned counsel for the appellant and learned Special P.P. for the State as well as learned counsel for the respondent no.2/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, 1989 (hereinafter referred to as the “SC/ST Act”) against the refusal of prayer for bail vide order dated 08.09.2021 passed by the learned Additional Sessions Judge-I, Banka,



in connection with Katoria P.S. Case No. 174 of 2021 registered under Sections 302 and 34 of Indian Penal Code and Section 3(2)(v)(a) of SC/ST (POA) Act.

3. Present appeal is well within limitation as prescribed under Section 14A(3) of the Act.
4. Notice has been issued to Respondent no.2, served upon and duly represented.
5. The appellant is named in F.I.R. and is in custody since 29.08.2021.
6. The allegation against the appellant is to commit murder of husband of the informant along with other co-accused persons in the background of previous enmities.
7. Learned counsel for the appellant submitted that informant is not the eye-witness of the present occurrence and the entire allegation is on the basis of suspicion, due to long standing land dispute. It is also submitted that nothing surfaced during course of investigation, except suspicion, which may incriminate the appellant with the present set of occurrence. It is also submitted that to pressurize the appellant to compromise in Katoriya P.S. Case No. 168 of 2021, this appellant has been falsely implicated in the present case. It is submitted that



maximum incriminating circumstances surfaced, during course of investigation against petitioner is to made a call on the cell-phone of the deceased, on the date of occurrence. It is also submitted that both the parties residing in same locality and as such, it is obvious to have same mobile tower location. It is also submitted that from bare perusal of FIR, it can be safely gathered that the allegation/act of the appellant, cannot be said atrocities within the meaning of the Act. It is also submitted that appellant is a man of clean antecedent. While concluding the argument, it is submitted that investigation has been completed, for which, charge-sheet has already been submitted in this case, 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. for the State duly assisted by learned counsel for the Respondent No.2/Informant, while opposing prayer for bail, fairly conceded the fact that the



informant is not the eye-witness of the present occurrence, as per FIR.

10. In view of the submissions, as made above, as the informant is not the eye-witness of the present occurrence and nothing incriminating surfaced during course of investigation, which may connect the petitioner, *prima-facie*, with the present set of occurrence, where petitioner is a man of clean antecedent coupled with the fact that charge-sheet has already been submitted, let the appellant, above named, is directed to be released on bail in connection with Katoria P.S. Case No. 174 of 2021 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 Sessions Judge-1st, Banka/concerned court, subject to the following conditions:

“(i) Appellant 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 appellant, duly supported by the documents.

(ii) That one of the bailors shall be Rekha Devi, who is the wife of the appellant and deponent of the present appeal.”



11. Accordingly, impugned order dated 08.09.2021 is
set aside.

12. Hence, appeal stands allowed.

(Chandra Shekhar Jha, J)

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