

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3711 of 2021**

Arising Out of PS. Case No.-61 Year-2021 Thana- MAHISHI District- Saharsa

Mukesh Thakur, Son of Late Jugeshwar Thakur @ Saryug Thakur, Resident of Village - Dhamsaini, P.s.- Saharsa, Distt.- Saharsa.

... .. Appellant/s

Versus

1. The State of Bihar
2. Dinesh Ram, Son of Jagdish Ram Resident of village- Hanuman Nagar, P.S.- Beldaur, Dist.- Khagaria

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Binod Kumar Sinha, Advocate
For the Respondent/s : Mr.Sadanand Paswan, Spl.P.P.

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

Date : 23-06-2022

Office has reported that notice has been issued to the respondent no.2 through both modes and it has been validly served upon him.

Since the notice has been validly served upon the respondent no.2 and despite the service of notice, the respondent no.2 has failed to put his appearance, the matter should not be kept pending.

Heard learned counsel for the appellant and learned counsel 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 02.07.2021 passed by the learned Additional Sessions Judge-III-cum-Special Judge SC/ST (POA) Act, Saharsa in connection with Criminal Case No. 756 of 2021 arising out of Mahishi P.S. Case No. 61 of 2021 registered under Sections 302, 201, 120(B)/34 of the I.P.C., and Section 3(1)(r) (s)/ 3(2)(v)/ 3(2)(va) of the SC/ST Act.

Learned counsel for the appellant has submitted that though the appellant has been named in the FIR along with 4-5 unknown persons, but there is no eye witness to the occurrence and the appellant has been named in the FIR merely on suspicion. There is nothing in the case diary to connect the appellant with the alleged occurrence and even Call Details Report or the location of the mobile phone of the appellant does not show that the appellant was near the place of occurrence. Another co-accused Mithun Kumar Sharma has been allowed privilege of bail by a coordinate Bench of this Court vide order dated 09.09.2021 passed in Cr. Appeal (SJ) No.3147 of 2021. The appellant is in custody since 01.06.2021.



Learned Special PP has opposed the prayer for bail, submitting that the appellant is named in the FIR and he along with other co-accused persons committed murder of the deceased Jitendra Ram and the witnesses in the case diary have also supported this fact.

Having regard to the submissions made here-in-above and considering the fact that there is no eye witness to the occurrence and even the facts for making out a case based on circumstantial evidence are sketchy, to say the least, and except for name of the appellant in the FIR and that he had talked with the deceased prior to incident, nothing appears on record to connect the appellant with the alleged occurrence, let the appellant, above named, be released on bail, on furnishing bail bonds of Rs. 20,000/- (Twenty thousand) with two sureties of the like amount each to the satisfaction of the learned Additional Sessions Judge-3rd-cum-Special Judge, SC/ST (POA), Act, Saharsa in connection with Criminal Case No.756/2021 arising out of Mahishi P.S. Case No. 61 of 2021 subject to 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 petitioner, preferably one of the parents.
- (iii) The petitioner will remain present on each and every date fixed by the court below.
- (iv) In case of absence for 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)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	24.06.2022
Transmission Date	24.06.2022

