

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3743 of 2021**

Arising Out of PS. Case No.-307 Year-2020 Thana- UDAKISHUNGANJ District-
Madhepura

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1. PAWAN KUMAR S/o JOGI PODDAR R/o VILLAGE-DOMARAHI, P.S.-
UDAKISHANGANJ, DISTRICT- MADHEPURA.
 2. SAJAN PODDAR @ SAJJAN PODDAR S/o JOGI PODDAR R/o
VILLAGE-DOMARAHI, P.S.- UDAKISHANGANJ, DISTRICT-
MADHEPURA.

... .. Appellant/s

Versus

1. THE STATE OF BIHAR
2. Dasrath Risidev son of late Ganga Risidev Vill-Domrahi, Ward No. 02, P.S.-
Udakishunganj, District- Madhepura

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mrs. Kumari Sujata Sinha, Advocate
For the Respondent/s	:	Mr. Sadanand Paswan, Spl. PP
For the Informant	:	Mr. Pawan Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

5 07-09-2022 Learned counsel for the appellants submits that appellant no. 1, namely, Pawan Kumar during the pendency of this appeal has been arrested, hence, seeks permission to withdraw his prayer for anticipatory bail.

Permission is accorded.

Heard learned counsel for the parties.

This is an appeal under Section 14-A(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 anticipatory bail vide order dated 19.06.2021 in A.B.P. No. 197 of 2021 passed by the



learned 1st Additional Sessions Judge, Madhepura in connection with Udakishanganj P.S. Case No. 307 of 2020 registered under Sections 307, 120(B)/34, 326, 302 of the Indian Penal Code, Sections 3(v) of the SC/ST Act and Section 27 of the Arms Act.

Learned counsel for the appellant no. 2 submits that appellant no. 2 is a person with clean antecedent.

The informant alleges that on 30.09.2020 at 11:45 p.m. his son along with Jaynandan Mandal, Pawan Kumar, Sajjan Poddar and Manohar Muni came with two live chickens and on asking they disclosed that the chickens have been purchased for being gifted to the Chairman and Mukhiya. Further, his son accompanied them thereafter the accused persons disclosed that they will drop his son back after sometime. It is alleged that on 01.10.2020 at 06:00 a.m. informant came to know that his son is lying in an injured condition in the field of Birendra Singh, accordingly, the informant reached the place of occurrence and found his son shot in the head, his mobile was missing, thereafter he was taken to the hospital. It is alleged that his son was having illicit relation with one woman Pachiya Devi and Pachiya Devi was also in illicit relation with Jaynandan Mandal on account of which a dispute had arisen between the deceased and Jaynandan



Mandal. Five days back, co-villager Jogi Poddar (Cr. Appeal (SJ) No. 3752 of 2021) had threatened the deceased of dire consequences, thus, on basis of suspicion alleges that his son was murdered in connivance with Pachiya Devi.

Learned counsel for the appellant no. 2 submits that the learned 1st Additional District and Sessions Judge, Madhepura in a mechanical manner rejected the prayer for anticipatory bail of appellant no. 2 holding the same to be not maintainable in view of the bar contained in SC/ST Act without appreciating the facts of the case in its correct perspective that prima facie no offence is made out against the appellant no. 2 under the SC/ST Act. He further submits that the Act does not contemplate that if an FIR is instituted under the SC/ST Act, the maintainability of anticipatory bail is barred, rather the allegations have to be seen as the Act is stringent in its operation. He next submits that the entire allegation hinges around suspicion and from the tenor of the allegation as alleged in the FIR, it would manifest that the deceased was known to the appellant no. 2 and had cordial relation, hence, in the night he came along with them with two live chickens and thereafter willingly accompanied them without any protest, further even the informant did not protest that the deceased should not



accompany the accused persons, this amply demonstrates that neither the deceased nor the informant had any apprehension with the accused persons including the appellant no. 2 or else the deceased would not have accompanied them. He further submits that though it is alleged that the deceased and Jaynandan Mandal had illicit relation with Pachiya Devi and the deceased even had altercation with Jaynandan Mandal and even threatened by Jogi Poddar but still the deceased was willingly accompanied Jaynandan Mandal in the night as is alleged in the FIR itself which clearly demonstrates that he had absolutely no apprehension. He next submits that the deceased had accompanied the accused persons excluding Jogi Poddar in the night, hence, there was absolutely no reason for the accused persons including the appellant no. 2 to commit the occurrence and, thus, got implicated knowing that it was within the knowledge of the informant that deceased had accompanied them. He also submits that the conduct of the informant also does not create confidence in the allegations as alleged for the reason that if informant had any apprehension from the accused persons including the appellant no. 2 then in the night itself he would have tried to inquire from the accused persons when his son did not return. This amply demonstrates that the informant



was sanguine that deceased had no threat from the accused persons including Jogi Poddar. It is next submitted that merely because allegation based on suspicion has been alleged and the foundation on which the allegation is based gets belied from the conduct of the deceased and the informant and, thus, to reject the prayer for anticipatory bail merely because the case is instituted under the SC/ST Act could be travesty of justice.

Learned Special Public Prosecutor and the informant opposed the prayer for anticipatory bail but are not able to meet the submission of the learned counsel for the appellant no. 2 that if the deceased or the informant had any serious apprehension with the accused persons including the appellant no. 2 then why the deceased at 11:45 p.m. in the night came brought them home along with two live chickens and why he willingly accompanied them on there mere asking without no protest.

Considering the submission made by the learned counsel for the appellant no. 2, let the appellant no. 2, above named, in the event of his arrest or surrender before the learned Court below within a period of thirty days from the date of receipt of the order, be released on anticipatory bail on furnishing bail bond of Rs.5,000/- (rupees five thousand) with



two sureties of the like amount each to the satisfaction of the learned court below where the case is pending in connection with the aforesaid case, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

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

(Satyavrat Verma, J)

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