

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2898 of 2022**

Arising Out of PS. Case No.-28 Year-2022 Thana- DHANKUND District- Banka

Sulekha Devi Wife Of Parmanand Yadav, R/O Village- Alipur, P.S.- Nawada Bazar (O.P.), District- Banka

... .. Appellant/s

Versus

The State Of Bihar Through The Public Prosecutor Of The Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Act 1989, Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 3069 of 2022

Arising Out of PS. Case No.-28 Year-2022 Thana- DHANKUND District- Banka

Diwakar Kumar @ Diwakar Kumar Nirala S/o Adhiklal Yadav, Resident of village- Parsoutipur, P.S.- Nawada Bazar, District- Banka.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 2898 of 2022)

For the Appellant/s : Mr. Sanjay Kumar, Advocate

For the Respondent/s : Mr. Sadanand Paswan, Advocate

(In CRIMINAL APPEAL (SJ) No. 3069 of 2022)

For the Appellant/s : Mr. Y. C. Verma, Sr. Advocate

Ms. Kumari Anupam, Advocate

For the Respondent/s : Mr. Binay Krishna, Spl. PP

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

Date : 10-11-2022

Since both the appeals arise out of common order passed by the learned 1st Additional Sessions Judge -cum-Special Judge, SC/ST, Banka in connection with G.R. Case No. 17 of 2022 arising out of Dhankund P.S. Case No. 28 of 2022, as such, they have been taken up together and are being disposed of by this common judgment.

Heard learned counsels for the appellants and learned



Special P.P. for the State.

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

These are the appeals 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 13.07.2022 passed by the learned 1st Additional Sessions Judge -cum-Special Judge, SC/ST, Banka in connection with G.R. Case No. 17 of 2022 arising out of Dhankund P.S. Case No. 28 of 2022, registered for the alleged offences under Sections 302, 201/34 of the Indian Penal Code and Section 3(2)(Va) of the Scheduled Castes and Scheduled Tribes (POA) Act.

As per the prosecution case, during checking of vehicles, a vehicle was intercepted and 4 co-accused persons were apprehended. Body of an unconscious lady was found in the said vehicle. When the lady was taken to the hospital, she was declared brought dead. From interrogation of the apprehended co-accused persons, the fact came to the knowledge that the lady was the wife of one Rajesh Kumar @ Raja and it was a love marriage and the family members of the husband were not happy with the marriage and they committed murder of the lady and the named co-accused persons of the F.I.R. had been taking the dead body for disposal. The appellant Sulekha Devi is the aunt of the husband of the



deceased whereas, appellant Diwakar Kumar @ Diwakar Kumar Nirala is a distant relative of the father of the husband of the deceased. They are alleged to have committed the murder of the lady whose dead body was found in the car.

Learned counsel appearing on behalf of appellant Sulekha Devi submits that the appellant is innocent and has been falsely implicated in this case. She is an old lady and lives separate from the family of the husband of the deceased. Learned counsel further submits that on the eve of the festival of Holi, the deceased became unconscious and at the request of her husband, she was being taken by the vehicle for her emergency treatment and she died for want of treatment as the vehicle was stopped and police took its time for taking her to the Health Center. Moreover, the allegation is that of strangulating the deceased with *Gamchha* but the postmortem report does not show the death has been caused by strangulation or throttling. Learned counsel further submits that allegations are completely vague and there is no eye witness to any of the alleged occurrences and there is no cogent material to connect the appellant with the crime as alleged. The appellant is in custody since 28.06.2022 and is having fair antecedent. The charge-sheet has been submitted.

Learned senior counsel appearing on behalf of appellant Diwakar Kumar @ Diwakar Kumar Nirala submits that the whole



case is completely without any substance and allegations are completely vague and omnibus. The appellant is a relative and he has been dragged in this case on the basis of confessional statement of co-accused driver and other co-accused persons and except for the confessional statement, there is nothing on record to show the complicity of the appellant in the murder of the deceased. There is no eye witness on the point of murder. There is complete lack of any material against the appellant to support the case against him for murder of the deceased. The appellant is in custody since 29.06.2022 and is having fair antecedent. The charge-sheet has been submitted.

Learned Spl. P.P. opposes the submission made on behalf of the appellants. However, he concedes that the postmortem report does not support the allegation regarding murder caused by strangulation or throttling and further allegations are general and vague.

Perused the records.

Having regard to the facts and circumstances and submissions made on behalf of the parties and considering the vague nature of allegation and distinct lack of substantive material to connect the appellants to the offence as alleged and further considering the submission of charge sheet, the appellants above named are directed to be released on bail on furnishing bail bonds



of Rs. 20,000/- (twenty thousand) each with two sureties of the like amount each to the satisfaction of the learned 1st Additional Sessions Judge-cum-Special Judge, SC/ST, Banka in connection with G.R. Case No. 17 of 2022 arising out of Dhankund P.S. Case No. 28 of 2022, subject to the conditions mentioned in Section 437(3) of the Code of Criminal Procedure and also the following conditions :

- (i) One of the bailors will be a close relative of the appellants.
- (ii) The appellants will remain present on each and every date fixed by the court below.
- (iii) In case of absence on three consecutive dates or in violation of the terms of the bail, the bail bond of the appellants will be liable to be cancelled by the court concerned.

Accordingly, the impugned order is set aside and the appeals are allowed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10-11-2022
Transmission Date	10-11-2022

