

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3328 of 2022

Arising Out of PS. Case No.-108 Year-2021 Thana- GAUTAMBUDHNAGAR District-
Siwan

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Awadhesh Sah @ Awadhesh Gond, Son of Sudama Sah, Resident of Village -
Tarwara Uriyaan Tola, P.O.- Tarwara, P.S.- G.B. Nagar, Distt.- Siwan.

... .. Appellant/s

Versus

1. The State of Bihar
2. Hari Kishun Ram, Son of Late Foddar Ram, Resident of Village -
Nathanpura, P.s.- C.V. Nagar, Distt.- Siwan, Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Pratiyush Kumar, Advocate
For the Respondent/s : Mr.Binay Krishna, Spl.PP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 22-12-2022

Heard learned counsel for the appellant and learned
Spl.PP for the State.

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 17.08.2022 passed by the learned Special Judge
SC/ST-cum-Additional Sessions Judge-1, Siwan in connection
with Gautam Budh Nagar P.S. Case No. 108 of 2021, registered
for the alleged offences under Sections 302, 201 and 34 of the
Indian Penal Code and Section 3 (2)(v) of the Scheduled Castes
and Scheduled Tribes Act.



As per the prosecution case, co-accused Dinesh Tiwari came to the house of the informant and took away his son on his motorcycle. Thereafter, the informant came to know about the dead body of his son lying in a pond in the barren land of the village. The informant has alleged that his son had taken some money from the co-accused Dinesh Tiwari and for return of the said money the co-accused killed the son of the informant with the help of his associates. The name of the appellant transpired as one of the accused persons during investigation.

The learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in this case. The name of the appellant came in the confessional statement of co-accused Dinesh Tiwari and except for this statement, there is no material on record to even remotely associate the appellant with the present occurrence. The appellant is not acquainted with the co-accused Dinesh Tiwari. The appellant is himself a person belonging to the Scheduled Caste category, therefore, no offence would be made under the provisions of the SC/ST Act against the appellant. Similarly situated co-accused, namely, Om Prakash Tiwari has been granted bail by a Co-ordinate Bench of this Court vide order dated 18.08.2022 passed in Cr. Appeal (SJ) No. 4842 of 2021.



Learned counsel further submits that the appellant is not named in the FIR and the respondent no.2 at the time of preparation of inquest report and even at the time of conduct of post-mortem, did not allege anything against the appellant and nothing incriminating has been recovered from the possession of this appellant. Learned counsel further submits that the appellant's father deposed against one Birendra Singh in Title Suit Case No. 240 of 1985 and as the present I.O. and the Officer-in-charge of the Gautam Budh Nagar Police Station reside in the rented premises of the Birendra Singh and therefore, the appellant has been frivolously implicated in vexatious criminal cases. The appellant is in custody since 26.06.2022 and the charge sheet has been submitted in this case.

Learned Spl.PP opposes the prayer for bail submitting that there is specific allegation against the co-accused and the informant came to know that this appellant was also involved in the murder of the son of the informant.

Having regard to the facts and circumstances and submissions made on behalf of the parties and considering the lack of substantive material against this appellant to show his involvement in the offence as alleged and further considering the period of custody of the appellant along with submission of



charge sheet against him, 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 Special Judge SC/ST-cum-Additional Sessions Judge-I, Siwan in connection with Gautam Budh Nagar P.S. Case No. 108 of 2021, 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 appellant.
- (ii) The appellant 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 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	23.12.2022
Transmission Date	23.12.2022

