

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4661 of 2021

Arising Out of PS. Case No.-239 Year-2021 Thana- BAKHTIARPUR District- Saharsa

JAI KISHUN YADAV @JAI KRISHNA YADAV Son of Late Laxmi Yadav
@ Laturi Yadav Resident of Village - Hussainchak, P.S.- Bakhtiarpur, Distt.-
Saharsa.

... .. Appellant/s

Versus

1. The State of Bihar
2. Domi Choudhary S/O Ramdeo Choudhary R/O Village-Kharagpur, P.S.-
Sonbarsa Kachahari, District-Saharsa

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Shiva Shankar Sharma, Adv.
For the Respondent/s	:	Mr. Binay Krishna, Spl.P.P.
For the Resp. No.2	:	Mr. Sanjeev Verma, Adv.

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL ORDER

4 07-07-2022 Heard learned counsel for the appellant and learned
Spl. PP for the State.

The appellant has filed the instant appeal against the order dated 16.11.2021 passed in Bakhtiarpur P.S. Case No. 239/2021 by the learned Additional Sessions Judge 3rd-cum-Special Judge SC/ST Act, Saharsa whereby the prayer for bail of the appellant in connection with Bakhtiarpur P.S. Case No. 239/2021 registered under sections 302, 201, 323, 120B of the Indian Penal Code and Sections 3(2) (v), 3(2) (V-a) of the SC & ST Act was rejected.

As per prosecution case, on 30.07.2021 the informant's mother had gone for morning walk in Lala Tola and



had not returned till 10 a.m. and thereafter, the informant started to search her. In course of search the informant found the dead body of his mother in Jalkumbhi and the informant found injury on the head of his mother caused by sharp cutting weapon.

It is submitted by learned counsel for the appellant that FIR against unknown and there is no specific overt act against the appellant. No any incriminating materials has been collected against him in course of investigation. It is further submitted by learned counsel for the appellant that there is no eye witness in course of investigation but even then the appellant has charge sheeted on mere suspicion. The name of present appellant has been surfaced by giving typed petition before the S.P., Saharsa or D.S.P., Simri Bakhtiarpur on 17.08.2021, prior to that neither the informant nor any of the family members have whispered against the appellant. During course of investigation except the written report petition to the S.P. or D.S.P, Saharsa, nothing has been found or no any material found to demonstrate the alleged occurrence by the present appellant. The appellant is in custody since 06.10.2021 and bears no criminal antecedent.

Learned counsel for the Respondent no.2 as well as learned Spl. PP for the State opposed the prayer for appeal.



Having heard learned counsel for the parties and taking into consideration the facts and circumstances of the case, the nature of allegations, FIR against unknown and the period in custody, the Court is inclined to allow the instant appeal. The appeal is allowed and the order dated 16.11.2021 passed in Bakhtiarpur P.S. Case No. 239/2021 by the learned Additional Sessions Judge 3rd-cum-Special Judge SC/ST Act, Saharsa is set aside.

The appellant is directed to be enlarged on bail in connection with Bakhtiarpur P.S. Case No. 239/2021 on furnishing bail bond of Rs.10,000/ (Rupees Ten thousand) with two sureties of the like amount each to the satisfaction of the learned Additional Sessions Judge 3rd-cum-Special Judge SC/ST Act, Saharsa, subject to following conditions:-

(i) One of the bailors shall be either father or mother or sister or brother or wife or the person who has sworn the affidavit in bail application.

(ii) Appellant will co-operate in trial and will remain present on all dates and absence for two consecutive dates would be a ground for cancellation of bail by the learned Trial court itself.

(iii) If the appellant tampers with the evidence or the



witnesses, in that case, the prosecution will be at liberty to move
for cancellation of bail.

(Alok Kumar Pandey, J)

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