

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4842 of 2021**

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

=====

OM PRAKASH TIWARI Son of Avadhesh Tiwari @ Awadesh Tiwari Resident
of Village- Bharatpura, P.S.- G.B. Nagar, District- 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, District- Siwan

... .. Respondent/s

=====

Appearance :

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

For the Respondent/s : Mr. Sadanand Paswan, Spl. P.P.

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

3 18-08-2022 Learned counsel for the Appellant is permitted to

remove defect(s), as pointed out by the office, if any, within a

period of four weeks from today.

Despite service of notice upon opposite party no. 2,

no-one appears on his behalf.

Heard Mr. Ravindra Kumar, learned counsel for the

Appellant as well as learned Special Public Prosecutor for the

State.

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 bail vide order dated



22.09.2021 passed by the learned 1st Additional Sessions Judge-cum-Special Judge, Siwan in connection with Special Sessions Case No. 60 of 2021 (Arising out of G.B. Nagar P. S. Case No. 108 of 2021) registered for the offences punishable under Sections 302 and 201 read with 34 of the Indian Penal Code and Sections 3(2)(v) of the SC/ST (Prevention of Atrocities) Act.

As per the prosecution case, it is alleged that on 03.05.2021 at about 08:00 O'clock in the morning co-accused Dinesh Tiwari came to the house of the informant/opposite party no.2 took away his son Mantu Ram on his motorcycle. At about 02:00 O'clock, the informant/opposite party no.2 received an information that his son is lying dead near a pond. On 04.05.2021, the present F.I.R. has been instituted against co-accused Dinesh Tiwari.

Learned counsel appearing on behalf of the Appellant submitted that the appellant is not named in the F.I.R., However, during the course of investigation the appellant being brother-in-law of the co-accused Dinesh Tiwari has been apprehended on suspicion and thereafter, his confessional statement has been recorded. It is further submitted that save and except the confessional statement, there is no other material available on record, which suggests the complicity of the



appellant in the present crime. It is next submitted that only because of the past criminal antecedent, his name has been implicated in this case, though, there is no eye-witness to the alleged occurrence and it is not a case of prosecution that he had ever been seen along with the deceased. It is also submitted that after recovery of the dead body, the inquest report has been prepared and the post mortem was done but surprisingly, at that point of time, the informant/opposite party no. 2 has not made any statement before the police with regard to the complicity of the appellant and any other co-accused persons and after inquest report and post mortem, this F.I.R. has been instituted. It is lastly submitted that this appellant is in custody since 19.08.2021 and moreover, the allegations made in the F.I.R., no case is constituted under any penal provisions of SC/ST Act.

On the other hand, learned Special Public Prosecutor for the State opposes the present appeal and submits that the name of the appellant has transpired, during the course of investigation and he himself confessed his involvement in the present crime.

Having considered the submissions made on behalf of the parties and taking into account the fact that the appellant is not named in the F.I.R. and his name has transpired on the



second re-statement of the informant/opposite party no. 2 and moreover, he is in custody since 19.08.2021, let the appellant, above named, be released on bail on furnishing bail bonds of Rs. 20,000/- (Rupees twenty thousand) with two sureties of the like amount each to the satisfaction of learned 1st Additional Sessions Judge-cum Special Judge, Siwan, District Siwan in connection with Special Sessions Case No. 60 of 2021 (Arising out of G.B. Nagar P. S. Case No. 108 of 2021), subject to the condition that one of the bailors will be the close relative of the appellant with further conditions which are as follows:-

- (i) The appellant will cooperate in conclusion of the trial.
- (ii) He will remain present on each and every date of trial till disposal of the case.
- (iii) He will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.
- (iv) In the event of default of two consecutive dates without any cogent reason, his bail bonds will liable to be cancelled.
- (v) The Court below shall verify the criminal antecedent of the petitioner and in case at any



stage, it is found that the appellant has concealed his criminal antecedent, the court below shall take step for cancelling of bail bond of the appellant. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

In view of the aforesaid fact, the impugned order dated 22.09.2021 is hereby set aside and the present appeal is allowed.

(Harish Kumar, J)

shakir/-

U			
---	--	--	--

