

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.87 of 2022

Arising Out of PS. Case No.-177 Year-2021 Thana- HARNAUT District- Nalanda

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AMRENDRA KUMAR Son of Mallu Ram Resident of Village - Mudhari,
P.S.- Harnaut, Distt.- Nalanda.

... .. Appellant/s

Versus

1. The State of Bihar Bihar
2. Sri Bijendra Paswan Son of Late Dewakii Paswan Resident of Village -
Mudhari, P.s.- Harnaut, Distt.- Nalanda.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Indu Bhushan

For the Respondent/s : Mr.Sadanand Paswan

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 08-09-2022

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

Heard learned counsel for the appellant and learned Spl.
P.P. for the State as well as learned counsel for the informant.

The instant appellant has filed the instant appeal against
the order dated 10.12.2021 passed by the learned First Additional
Sessions Judge-IIIrd-cum-Special Judge, SC/ST Act, Bihar Sharif
(Nalanda) arising out of Harnaut P.S. Case No. 177 of 2021
registered under Sections 147, 148, 149, 302 of the Indian Penal
Code 27 Arms Act and Section 3(2)(v) of the SC & ST Act
whereby and whereunder the prayer for bail of the appellant was
rejected.



As per prosecution case, informant was sitting at the door of his house then after hearing hulla from east side of his village, informant arrived at the place of occurrence and saw that petitioner alongwith other co-accused persons being armed with rifle, pistol and lathi in their hand was present there and due to previous enmity, on the order of co-accused Mallu Rai, Shishupal Kumar fired upon the informant's brother namely Hira Paswan which hit the eye of informant's brother and informant's brother died on the spot.

Learned counsel for the appellant submits that appellant is in custody since 05.10.2021. Appellant bears no criminal antecedent. Charge sheet has already been submitted in the case and there is no likelihood of tampering with the prosecution evidence. Learned counsel further submits that appellant is only member of mob. There is no specific allegation against the appellant. There is allegation of one shot firing upon informant's brother against co-accused Shishupal Kumar which is apparent from the perusal of F.I.R. itself. In view of the matter no case under Section 302 of the I.P.C. will be made out against the appellant as the appellant is not responsible for causing murder to the informant's brother. No case is made out under Section 3(2)(v) of the SC/ST Act as the allegation alleged in the F.I.R. against the



appellant. There is no overt-act against the appellant. Learned counsel further submits that even there is no specific allegation of carrying arms against the appellant as alleged in the F.I.R. except he is a member of mob. Co-accused Raj Kumar Ram alias Raj Kumar and Dinesh Ram have already been granted bail vide Cr. Appeal (SJ) No. 3883 of 2021 by the co-ordinate bench of this Court as mentioned at Annexure-2 of the bail petition and the case of present appellant is stands on similar footing.

The learned Spl.P.P. for the State and learned counsel for the Respondent No. 2 vehemently oppose the prayer for bail of the appellant .

Considering the facts and circumstances of the present appeal as well as period of custody, charge-sheet has already been submitted and there is no likelihood of tampering with the prosecution evidence, keeping in view clean antecedent of the appellant, argument advanced on behalf of the parties and also taking into consideration the material available on record, the order dated 10.12.2021 passed by learned First Additional Sessions Judge – IIIrd -cum- Special Judge, SC/ST Act, Bihar Sharif (Nalanda) is set aside and present appeal is allowed. The appellant is directed to be enlarged on bail in connection with Harnaut P.S. Case No. 177 of 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 First Additional Sessions Judge – IIIrd -cum- Special Judge, SC/ST Act, Bihar Sharif (Nalanda), 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 without appropriate permission 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)

amitkr/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	19.09.2022
Transmission Date	19.09.2022

