

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.718 of 2023**

Arising Out of PS. Case No.-302 Year-2021 Thana- OBRA District- Aurangabad

Birjkishore Singh @ Brajkishore Yadav @ Brijkishore Yadav Son Of Late
Kuldeep Singh Resident Of Village- Bharub, P.S.- Obra, District- Aurangabad

... .. Appellant/s

Versus

1. The State of Bihar
2. Umesh Paswan Son of Ramnath Paswan Resident of Village- Bharub,
Hariharganj Tola, P.S.- Obra, District- Aurangabad

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Yogesh Chandra Verma, Sr. Advocate
	:	Mr. Ashok Kumar Singh, Advocate
	:	Mr. Abhishek Kumar Singh, Advocate
For the Respondent/s	:	Mr. Binay Krishna, Spl.P.P.
For the Informant	:	Ms. Mukul Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

3 14-07-2023 Heard learned counsel for the appellant and learned

Special P.P. for the State, on point of admission and on merit

also.

2. The appellant has preferred the present appeal under Section 14A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short ‘the Act’) against the order dated 10.01.2023 passed by the learned 1st Additional District and Sessions Judge-cum-Special Judge, SC/ST, Aurangabad in connection with Obra P.S. Case No. 302 of 2021 registered under Sections 341, 323, 504, 506, 307, 342 and 354/34 of the Indian Penal Code, Section 27 of Arms Act and



Section 3(1)(r), 3(1)(s)/3(2)(VA) of the SC/ST Act.

3. Present appeal is well within limitation as prescribed under Section 14A(3) of the Act.

4. It is submitted by learned Special P.P. that information has been given to the informant, in terms of the order dated 23.06.2023 about the present Court proceedings, where informant is duly represented.

5. Appellant is named in F.I.R. and is in custody since 11.12.2022.

6. The allegation against the appellant is to fire upon informant and others causing firearm injury having intention to cause their death, where occurrence arises out of local panchayat elections.

7. Learned counsel for the appellant submitted that the occurrence is of free fight in nature, where exchange of firing was made from both sides causing injury to appellant side also for which a prior case to the present occurrence was registered as Obra P.S. Case No. 301 of 2022. It is also submitted as exchange of firing appears to be made from both sides and it can be safely gathered that appellant was not under intention to cause death. While travelling over the argument it is submitted that alleged firing as caused by this appellant hit non-vital part



of the body of injured, namely Rajbihari Paswan, and same also not appears repeated, sufficient to negate “intention to cause death” which is an essential ingredient to attract offence under Section 307 of the Indian Penal Code. It is also submitted that nothing surfaced during the course of investigation and from the bare perusal of the F.I.R., which may, on its face, suggest that the act of appellant attract atrocities within the meaning of the Act. While concluding the argument, it is submitted that appellant found involved in 6 more criminal cases, where he is on bail and moreover, investigation in this case is complete for which chargesheet has been submitted, as such, there is no chance of tampering with the evidence.

8. Learned counsel for the appellant submitted that if insult is not caused to complainant/informant on the basis of caste, no case is made out under the Act, as it was held in ***State of Madhya Pradesh Vs. Parasram @ Purushottam, as reported in 2015 (153) AIC 276.***

9. Learned Special P.P. duly assisted by learned counsel appearing on behalf of informant, while opposing the prayer of bail submitted that allegation of firing is specific against this appellant, which also appears in corroboration with the injury report.



10. In view of the facts and circumstances, as mentioned above, and by taking note of the fact as occurrence is free fight in nature, where exchange of firing appears to be made from both sides and as alleged injury caused by this appellant appears on the non-vital part of the body coupled with the fact, that chargesheet has already been submitted, where appellant is in custody since 11.12.2022, accordingly the appellant, above named, is directed to be released on bail in connection with Obra P.S. Case No. 302 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 learned 1st Additional District and Sessions Judge-cum-Special Judge, SC/ST, Aurangabad/concerned Court, subject to the conditions, as mentioned under Section 437(3) of the Cr.P.C.

11. Accordingly, impugned order dated 10.01.2023 is set aside.

12. Hence, appeal is allowed.

(Chandra Shekhar Jha, J)

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