

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1841 of 2023

Arising Out of PS. Case No.-101 Year-2021 Thana- KATIHAR MUFFASIL District- Katihar

Sanjeev Kumar Son Of Ramesh Pandit @ Mukhiya Pandit R/O Village-
Mohammadpur, Jai Mangla Shiv Mandir Tola, Post Office- Gokulpur, P.S.-
Champa Nagar O.P. (K, Nagar Police Station), District- Purnea.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Sanjoli Devi Wife Of Late Dharmendra Ravidas R/o Village- Daheriya
Bhattha, P.S.- Mufassil, District- Katihar, Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rajnish Kumar Singh, Adv.
For the Respondent/s	:	Ms. Usha Kumari 1, Spl. P.P.

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 26-04-2023

In view of the submissions made by learned counsel for the petitioner, the defect no.6(1) pointed out by the stamp reporter is hereby ignored.

Heard Mr. Rajnish Kumar Singh, learned counsel for the appellant and Ms. Usha Kumari No.1, learned Special Public Prosecutor for the State.

This is the second attempt wherein the appellant is renewing his prayer for bail by filing the instant appeal under Section 14(A)(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against the refusal of prayer for bail vide order dated 10.12.2021 passed by learned A.D.J.-I-cum-Special Judge, SC/ST, Katihar in Muffasil P.S. Case No.



101 of 2021 registered under Sections 302, 120B read with 34 of the Indian Penal Code, Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Sections 25(1-b)a, 26 and 35 of the Arms Act.

Earlier, the prayer for bail of the appellant was rejected vide order dated 15.09.2022 passed in Cr. Appeal (SJ) No. 356 of 2022 after taking into consideration the materials available on record, especially the recovery of the arms which is said to have been used for the purposes of crime, in question. However, while dismissing the aforesaid appeal, this Court had observed that the learned Trial Court will take all necessary measures to expedite and conclude the trial at the earliest, as preferably within a period of four months. But, till date altogether nine official witnesses are yet to be examined.

Learned counsel for the appellant submits at the Bar that besides the confessional statement before the police which is not admissible in law. Section 26 of the Evidence Act stipulates that the confession by an accused while in custody of the police not to be proved against him. However, Section 27 of the Evidence Act is an exception to the aforesaid provision wherein it has been made clear that the confession leading to recovery may be proved. In the instant case, the co-accused has



given narration of the incident before the police but in view of the aforesaid provision, only confession to the extent of leading to recovery of the weapon may be proved as admissible against the appellant. The remaining part of the statement cannot be admissible under the Evidence Act. He further submits that moreover the weapon which is said to have been recovered that has never been examined as to whether the said weapon is used in the commission of crime or not. Lastly, he submits that the appellant is in custody since 24.06.2021.

Learned Spl. P.P. for the State opposes the bail prayer of the appellant and submits that earlier the prayer for bail of the appellant has been rejected on merit and there is no changed circumstance warranting reconsideration his prayer for bail.

Having considered the submissions made on behalf of the appellant and considering the fact that there is no likelihood of the conclusion of the trial in near future, apart from period of custody and having fair antecedent, let the appellant, named above, be released on bail on furnishing bail bonds of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned A.D.J.-I-cum-Special Judge, SC/ST, Katihar in connection with Muffasil P.S. Case No. 101 of 2021, subject to the condition that one of the bailors will be



the close relatives 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.

Accordingly, the impugned order dated 10.12.2021 passed by learned A.D.J.-I-cum-Special Judge, SC/ST, Katihar in Muffasil P.S. Case No. 101 of 2021, is set aside and the appeal stands allowed.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27-04-2023
Transmission Date	27-04-2023

