

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1799 of 2022

Arising Out of PS. Case No.-148 Year-2020 Thana- KATIHAR MUFFASIL District- Katihar

MOJBIR @ MOJAHID Son of Karu @ Kalimuddin @ Md. Abdul Karim
Resident of Village - Garhbheli, P.S.- Muffasil (Katihar), District - Katihar.

... .. Appellant/s

Versus

1. The State of Bihar
2. Sunil Kumar Son of Sagar Uron Resident of Village - Naya Tola, P.S.-
Muffasil (Katihar), District - Katihar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Pawan Kumar Singh
For the Respondent No.1: Mr. Sadanand Paswan
For the Respondent No. 2 : None

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

4 11-01-2023 Despite valid service of notice nobody is present on
behalf of the informant/Respondent No. 2.

Heard Ld. counsel for the appellant and Ld.
Special Public Prosecutor for the State.

This criminal appeal has been filed to enlarge the
appellant on bail, impugning the order dated 26.04.2022,
passed by the Ld. 1st Additional Sessions Judge-Cum-Special



Judge (SC/ST) Katihar, arising out of Muffasil (Katihar) P.S. Case No. 148 of 2020, registered for offence punishable under Sections 302 of the I.P.C. and Sections 3(1) (i)(r)(s) of ST/ST Act whereby bail has been denied to the appellant.

The prosecution case as emerging from the FIR is that when the uncle of the informant had gone outside from his house for the purpose of repairing his bicycle, the appellant assaulted him by means of knife in his stomach due to which he died.

Ld. counsel for the appellant submits that the appellant is innocent and has falsely been implicated in this case. He further submits that in his examination-in-chief the informant has not supported the content of the FIR because in his deposition before the Trial Court both in examination-in-chief as well as cross-examination he has clearly stated that it is Nizamun Mahamud who has killed the deceased as per the statement made by the deceased to the informant. The name of the appellant has not been mentioned as killer of the victim.

He further submits that the appellant has been



languishing in jail since 22.06.2020.

It has also been stated in paragraph no. 3 of the bail petition that the appellant has no criminal antecedents.

It is also stated in paragraph no. 2 of the bail petition that the appellant has not moved this Court earlier either for anticipatory bail or regular one.

However, the Ld. Special Public Prosecutor for the State and Ld. Counsel for the informant vehemently opposes the prayer of the appellant for bail. However, he concedes that as per deposition of the informant, it is Nizamun Mahamud who has killed the deceased as per the statement made by the deceased to the informant.

Considering the aforesaid facts and circumstances, particularly the statement of the informant in his deposition before the Trial Court, **this appeal is allowed**, setting aside the impugned order dated 26.04.2022, passed by the Ld. Ld. 1st Additional Sessions Judge-Cum-Special Judge (SC/ST) Katihar, and directing the appellant to be released on bail on his furnishing bail bonds in the sum of Rs. 10,000 /- (Ten Thousand) with two sureties of the like amount each



to the satisfaction of the Ld. Ld. 1st Additional Sessions Judge-Cum-Special Judge (SC/ST) Katihar, in connection with Muffasil (Katihar) P.S. Case No. 148 of 2020, on the following conditions:

(i) The appellant will make himself available for interrogation by a police officer/court as and when required.

(ii) The appellant will undertake that investigation/trial will not hamper on account of his absence or non-cooperation. He must be available to the police or the court whenever his presence is required.

(iii) The appellant shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer.

(iv) In case, it is brought to the notice of the court below that the appellant has any criminal antecedent, the learned court below shall cancel the bail bond of the appellant after hearing him and getting satisfied that the appellant has concealed his criminal antecedent despite his



knowledge of the same.

(v) In case, it is brought to the notice of the court below that statement regarding previous bail petition is wrong, the learned court below shall cancel the bail bond of the appellant.

Ld. counsel for the appellant is directed to remove all the defects, if any, pointed out by the office within a period of one month and the Registry is directed to issue the certified copy of this order only after removal of office objections.

(Jitendra Kumar, J)

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