

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3422 of 2022

Arising Out of PS. Case No.-428 Year-2020 Thana- SUGAULI District- East Champaran

YADO LAL KUSHWAHA Son of Shital Kushwaha Resident of Village-
Mudda Chapra, P.S- Sugauli, District- East Champaran, Motihari

... .. Appellant/s

Versus

1. The State of Bihar
2. Sugandhi Devi W/O Late Late Harendra Manjhi Resident of village-
Kobaiya Bazar Mushahari Tola, P.S- Sugauli, District- East Champaran,
Motihari

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sharda Nand Mishra, Advocate
For the Respondent/s	:	Mr. Sadanand Paswan, Spl.P.P.

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

4 17-05-2023 1. Heard learned counsel for the appellant and

learned Special Public Prosecutor for the State. No one appears
on behalf of respondent no. 2 inspite of valid service of notice.

2. The instant appeal has been preferred by the
appellant against the order dated 6.9.2022 passed by the learned
Special Judge, SC/ST Act, East Champaran, Motihari whereby
the prayer for bail of the appellant in connection with Trial
No.35 of 2021 (arising out of Sugauli P.S. case No. 428 of 2020)
registered under section 302, 307, 147, 149, 341 and 323 of the
Indian Penal Code to which section 3(1)(r)(s) of the SC and ST
(Prevention of Atrocities) Act and section 27 of the Arms Act
were added subsequently, was rejected.



3. As per the allegation in the FIR, as a result of dispute over grazing of goat, it is stated that on the appellant and Om Prakash Kushwaha having fired three shots, the husband of the informant sustained gunshot injury and died subsequently in course of treatment.

4. The earlier prayer for bail of the appellant was rejected vide order dated 12.7.2021 (Annexure-1) passed in Cr. Appeal (SJ) No.2684 of 2021.

5. Learned counsel for the appellant referring to the FIR brought on record as annexures to the supplementary affidavit submits that from perusal of the FIR of Sugauli P.S. Case no. 396 of 2020 and Sugauli P.S. Case no.397 of 2020 which were registered within 3 days of the occurrence, it would transpire that the petitioner was not described as an assailant therein. It was only when the third FIR was registered 22 days after the alleged occurrence that the petitioner along with Om Prakash Kushwaha were alleged to have resorted to firing resulting in the death of the informant's husband. The said Om Prakash Kushwaha has been enlarged on bail vide order dated 14.12.2021 passed in Cr. Misc. No.40544 of 2021. The appellant is in custody since 17.2.2021 and undertakes to cooperate in the trial.



6. Having heard learned counsel for the parties and taking into consideration the submissions made on behalf of the appellant, the appellant having remained in custody for 2 years 3 months since 17.2.2021 and grant of bail to similarly situated coaccused Om Prakash Kushwaha by order dated 14.12.2021, the Court is inclined to allow the appeal.

7. The appeal is allowed and the order dated 6.9.2022 passed in Trial No.35 of 2021 (arising out of Sugauli P.S. case No. 428 of 2020) by learned Special Judge, SC/ST Act, East Champaran, Motihari, is set aside.

8. The appellant is directed to be enlarged on bail 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 1st Additional Session Judge, Motihari in connection with Trial No.35 of 2021 (arising out of Sugauli P.S. case No. 428 of 2020).

9. The appeal stands allowed.

(Partha Sarthy, J)

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