

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1636 of 2024

Arising Out of PS. Case No.-44 Year-2023 Thana- KUDHNI District- Kaimur (Bhabua)

1. Birendra Kumar Rai @ Virendra Kumar Rai S/O Late Kuber Rai Both Are Resident Of Village-Dumduma, P.S- Kudhani, District- Kaimur At Bhabua
2. Rakesh Kumar Rai S/O Subhash Chandra Rai Both Are Resident Of Village-Dumduma, P.S- Kudhani, District- Kaimur At Bhabua

... .. Appellant/s

Versus

1. The State Of Bihar
2. Guddu Mushar S/O Sudama Mushar R/O Village- Kudhani, P.S- Kudhani, Distt.- Kaimur (Bhabhua).

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Yogesh Kumar, Advocate
For the Respondent/s	:	Mr. Sadanand Paswan, SPP
For Respondent No. 2	:	Mr. Rakesh Kumar Mishra, Advocate Mr. Sanjeet Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA

ORAL ORDER

3 24-06-2024 Heard learned counsel for the appellants, learned Special Public Prosecutor for the State and learned counsel for the informant/Respondent No. 2.

2. The instant appeal has been filed by the appellants against the order dated 19.02.2024 passed by Learned Additional District and Sessions Judge-I-cum-Special Judge, Kaimur at Bhabhua, whereby the prayer for bail of the appellants in connection with Kudhani P.S. Case No. 44 of 2023, under Sections 147, 148, 149, 302 of the Indian Penal Code, Section 27 of the Arms Act and Section 3(2)(v) of SC/ST Act was rejected.



3. Prosecution case, in short, is that, appellants along with other co-accused persons armed with fire arms came at the field of the informant where they were cutting paddy and started firing towards them. Co-accused Arvind Rai fired a gun shot at Santosh Mushar and as a result of this Santosh Mushar died on the spot. All the accused persons fled away from the spot.

4. Learned counsel for the appellants submits that the appellants are innocent and have falsely been implicated in the present case. There is no specific allegation levelled against the appellants, rather the allegation is general and omnibus in nature. The specific allegation of firing is against co-accused Arvind Rai. No specific overt act is alleged against the appellants and they have been shown to be simply present at the place of occurrence and member of the mob. Learned counsel for the appellants further submits that the appellants have not taken the caste name of the informant in public view. Hence, no offence under the provisions of SC/ST Act is made out against them. The appellants have no intention to disgrace the image of the informant in public view. The appellants are in custody since 20.11.2023. Appellant No. 1 has four criminal antecedents in which the appellant is on bail and appellant Nos. 2 has no criminal antecedent.



5. Learned Special P.P. for the State and the informant have vehemently opposed the prayer for grant of bail to the appellants.

6. Considering the aforesaid facts and circumstances of the case and the period of custody undergone by the appellants, this Court is inclined to allow this appeal. Accordingly, the appeal is allowed and order dated 19.02.2024 passed by Learned Additional District and Sessions Judge-I-cum-Special Judge, Kaimur at Bhabhua, is hereby set aside.

7. Let the appellants 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 Court below/concerned Court in connection with Kudhani P.S. Case No. 44 of 2023, subject to the following conditions:

(I) One of the bailors shall be own/close member of the family of the appellants.

(II) The appellants shall appear on each and every date fixed at the trial. In case of default in such appearance on two consecutive dates, the Trial Court will have liberty to cancel the bail bonds of the appellants.

(Rudra Prakash Mishra, J)

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