

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1705 of 2024

Arising Out of PS. Case No.-866 Year-2023 Thana- MASAUDHI District- Patna

PRINCE KUMAR S/O VISHWANATH PRASAD @ VISHVNATH PRASAD YADAV R/O VILLAGE- PATHARAHAT, P.S- DHANARUA, DISTT.- PATNA.

... .. Appellant/s

Versus

1. THE STATE OF BIHAR
2. SAWETA KUMARI W/O KAMLESH KUMAR PASWAN R/O VILLAGE- KAJICHAK, P.S- LAHSUNA O.P, P.S- MASAUHRI, DISTT.- PATNA.

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 1875 of 2024

Arising Out of PS. Case No.-866 Year-2023 Thana- MASAUDHI District- Patna

Mukesh Kumar son of Asirvadi Yadav @ Ashirvadi @ Naresh Kumar @ Naresh Prasad Village- Thubhapar Ps- Dhanarua Dist- Patna

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 1705 of 2024)

For the Appellant/s : Mr.Dhirendra Kumar Sinha

For the Respondent/s : Mr.Sadanand Paswan

(In CRIMINAL APPEAL (SJ) No. 1875 of 2024)

For the Appellant/s : Mr.Dhirendra Kumar Sinha

For the Respondent/s : Mr.Sadanand Paswan

CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

ORAL ORDER

4 19-08-2024 Heard learned counsel for the appellants as well as the learned Special Public Prosecutor for the State.

2. This appeal has been preferred on behalf of the appellants under Section 14 (A) (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 for setting aside the order dated 07.03.2024 passed by the learned



Exclusive Special Judge, SC/ST Act, in connection with Masaurhi P.S. Case No. 866 of 2023 registered for offence punishable under sections 341, 323, 354, 302/34 of the Indian Penal Code and sections 27 of the Arms Act and Sections 3(i) (s) (w)/3/(2) (v) of the SC/ST (POA) Act, whereby the prayer for bail of the appellants has been rejected.

3. As per allegation, on 12.12.2023, when Anamika Kumari (deceased), daughter of the informant was going to attend her coaching classes, co-accused Niwash Kumar @ Fantush along with four others started uttering filthy words by calling her caste name and when she protested, co-accused Niwash Kumar @ Fantush shot dead her by opening fire with a pistol.

4. Learned counsel for the appellants has submitted that the appellants are innocent and have falsely been implicated in this case. He has further submitted that in paragraph no. 9 of the case diary, the independent witness Ajay Yadav, who is an eye witness has stated that on hearing the sound of firing, he went there, he saw a girl, suffering injuries and the appellants were also seen fleeing away having pistols in their hands. He has also submitted that paragraph no. 12 of the case diary contains the statement of maternal grandfather of the deceased,



who is not an eye witness but he has stated that co-accused Niwash @ Fantush had been following the deceased on her way to coaching for one year. She used to protest, but co-accused Niwash @ Fantush was persistently following her and on previous occasion after being ill-treated by the co-accused Niwash @ Fantush, the deceased had thrown brick bat on him and she had also abused him. It was the reason that the co-accused Niwash @ Fantush with his friends committed murder of the deceased. Paragraph no. 13 of the case diary contains the statement of father of the victim. Similar statement to that of the deposition of grand father as contained in para 12 of the case diary was made by this witness. He has also submitted that in paragraph no. 16 of the case diary in CCTV Footage only Niwash @ Fantush has been identified by the investigating authorities. He has next submitted that the confessional statement of the appellants cannot be taken into account as it was made before the police. He has further submitted that criminal antecedents of Prince Kumar has been mentioned in the case diary and in one of the cases, he has been acquitted and the one another is relating to the present one. As such, Prince Kumar, as a matter of fact, has only two criminal antecedents, except those two cases.



5. On the other hand, the learned counsel for the informant as well as learned Special Public Prosecutor for the State have opposed the prayer for bail. Learned counsel for the informant submits that appellant Prince Kumar is the person, who supplied the arms by which, murder was committed. Four cases of Arms Act have been disclosed in paragraph no. 3 of the bail petition against the appellant Prince Kumar. Learned Special Public Prosecutor for the State submits that appellant Mukesh Kumar has arranged the pistol for murder of the deceased. They have further submitted that the main accused Niwash @ Fantush had conversations with co-accused Mukesh Kumar after the occurrence.

6. From perusal of the record, it appears that appellant Mukesh Kumar is own brother of the co-accused Niwash @ Fantush so the conversation between both the brothers cannot be said to be incriminating circumstances for implicating him in the present case.

7. Considering the above-mentioned facts and circumstances, the Criminal Appeal (SJ) No. 1875 of 2024 is allowed and the impugned order dated 07.03.2024 is set aside.

8. Considering the above-mentioned facts and circumstances, the appellant Mukesh Kumar, shall be released



on bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount to the satisfaction of learned Exclusive Special Judge, SC/ST Act, in connection with Masaurhi P.S. Case No. 866 of 2023.

9. So far as appellant Prince Kumar is that he has criminal antecedents and allegedly he is supplier of the arms whereby the murder had taken place. Appellant Prince Kumar does not deserve the privilege of bail and accordingly, his prayer for bail is *rejected*.

(Nawneet Kumar Pandey, J)

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