

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3510 of 2023

Arising Out of PS. Case No.-14 Year-2023 Thana- KAMTAUL District- Darbhanga

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SUMIT KUMAR @ CHUNNU SON OF SANJAY THAKUR R/O-
CHUNABHATTI, MITHU CHAUK, P.S.-L.N.M.U. DISTT.-DARBHANGA

... .. Appellant/s

Versus

1. The State of Bihar BIHAR
2. KUSHA DEVI WIFE OF LATE PRAMOD PASWAN R/O-MADHOPATTI,
P.S.-KAMTAUL, DISTT.-DARBHANGA

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Girish Chandra Jha, Adv.
For the State	:	Mr.Binay Krishna, Spl.P.P.
For the Informant		Mr. Iqbal Asif Niazi, Adv.

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL ORDER

4 30-01-2024 Learned counsel for the appellant is permitted to make necessary correction in para-1 of the memo of appeal during course of the day.

2. Heard the parties.

3. The present appeal has been filed against the order dated 10.07.2023 (rectified on 18.07.2023) passed by learned 10th Additional Sessions Judge- cum Exclusive Special Judge SC/ST (POA) Act, Darbhanga whereby the prayer for bail of the appellant in connection with Kamtaul P.S. Case No. 14 of 2023 for the offence punishable under Sections 302/34 of the Indian Penal Code and 27 of the Arms Act was rejected.

4. As per prosecution case, on 22.01.2023, the



informant's husband was doing the duty of night guard at Manokamna petrol pump. It is alleged that at 2:00 AM, on hearing the sound of vehicle, informant's husband came outside and found that some people are said to have made conversation with one another. It is further alleged that as soon as miscreants saw the informant's husband, they abused him calling his caste name and also told to shoot. The miscreants fired which hit upon the left rib of informant's husband as a result of which he became unconscious and fell down on the ground. On hulla local people and informant's son came there and seeing them the miscreants started firing. It is further alleged that the miscreants after leaving one tempo and motorcycle without number plate, fled away from the place of occurrence. The informant's husband died in the way to hospital. Hence, FIR was registered against unknown.

5. Learned counsel for the appellant submits that the appellant is not named in the FIR and his name has been surfaced in this case during course of investigation on the basis of call detail report at para-28 of the case diary. He further submits that except confessional statement of appellant, there is nothing on record to connect the present appellant with the alleged occurrence, except this fact that appellant made



communication with mobile no. 9801021469 which stands in the name of Asha Devi, who is mother of co-accused Anand Kumar Mishra. No incriminating article has been recovered from possession of the appellant. Appellant has no criminal antecedent. Appellant is in custody since 25.01.2023, as mentioned in the impugned order. Learned counsel further submits that after investigation, police submitted charge sheet under Sections 302/34 of the IPC, 27 of the Arms Act and Sections 3(i)(r)/ 3(i)(s)/ 2(v)2(c) of SC/ST Act and there is no likelihood of tampering with the prosecution evidence. He further submits that confessional statement has no evidentiary value in the eye of law. Even confessional statement of appellant is taken into account, he is not the assailant of the deceased rather co-accused Raja Kamti is assailant of the deceased. He further submits that no incriminating article has been recovered on the basis of confession of the appellant. Learned counsel submits that bail prayer of co-accused Abhimanu Kumar Singh @ Abhimanyu Kumar Singh, Amit Kumar Yadav @ Salman and Rakesh Kumar Kamat @ Raja Kamat has been rejected by a co-ordinate Bench of this court and said co-accused persons bear criminal antecedent. So far as criminal antecedent of appellant is concerned, he does not have any criminal antecedent and case of



present appellant stands on better footing.

6. Learned counsel for the informant and learned A.P.P. for the State vehemently opposed the prayer of bail of the appellant and submit that bail prayer of co-accused Abhimanu Kumar Singh @ Abhimanyu Kumar Singh, Amit Kumar Yadav @ Salman and Rakesh Kumar Kamat @ Raja Kamat has already been rejected by a co-ordinate Bench of this Court.

7. Having heard learned counsel for the parties and taking into consideration the facts and circumstances of the case, period of custody, keeping in view clean antecedent of the appellant, charge-sheet has been submitted in this case and there is no likelihood of tampering with the prosecution evidence, argument advanced on behalf of both sides and also taking into consideration the material available on record, the Court is inclined to allow the instant appeal. The appeal is allowed and the order dated 10.07.2023 (rectified on 18.07.2023) passed by learned 10th Additional Sessions Judge- cum Exclusive Special Judge SC/ST (POA) Act, Darbhanga in connection with Kamtaul P.S. Case No. 14 of 2023 is set aside.

8. The appellant is directed to be enlarged on bail in connection with Kamtaul P.S. Case No. 14 of 2023 on furnishing bail bond of Rs. 20,000/- (twenty thousand) with two



sureties of the like amount each to the satisfaction of learned trial court, subject to following conditions:-

(i) One of the bailors shall be either father or mother or sister or brother or wife or the person who has sworn the affidavit in the instant appeal.

(ii) Appellant will co-operate in trial and will remain present on all dates and absence for two consecutive dates without appropriate permission, would be a ground for cancellation of bail by the learned Trial Court itself.

(iii) If the appellant tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

(Alok Kumar Pandey, J)

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