

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4405 of 2023

Arising Out of PS. Case No.-207 Year-2023 Thana- GORIAKOTHI District- Siwan

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Jitu Mishra Son Of Hareram Mishra Resident Of Village - Sarari, P.S. -
Goreyakothi, District - Siwan

... .. Appellant/s

Versus

The state of bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Ranjeet Kumar Pandey
For the State	:	Mr.Sadanand Paswan
For the Informant/s	:	Mr. Pritish Ranjan

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL ORDER

4 31-01-2024 Heard the parties.

2. The present appeal has been filed against the order dated 26.08.2023 passed by learned A.D.J.I-cum-Special Court, Siwan whereby and whereunder the prayer for bail of the appellant in connection with Goreyakothi P.S. Case No. 207 of 2023 for the offence punishable under Sections 302/34/120B of the IPC and Section 27 of the Arms Act and Section 3(2) (v) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act was rejected.

3. As per prosecution case, appellant and other are said to have concertedly fired upon informant's son.

4. Learned counsel for the appellant submits that from the perusal of the FIR, there is no specific allegation against the



appellant rather the same is general and omnibus in nature. It is further submitted that informant is not an eye witness to the alleged occurrence. It is further submitted that postmortem report indicates that there is only one gun shot injury and the allegation is against three accused persons. In this way, the story of prosecution is doubtful. Learned counsel further submits that during the course of investigation, it is also clear that there is no eye witness to the alleged occurrence and merely on the basis of suspicion, appellant has been falsely implicated in the case. Except suspicion, there is nothing on record to demonstrate the complicity of appellant with the alleged occurrence. It is further submitted that self-confessional statement of appellant has no evidentiary values in the eyes of law and even if the self-confessional is taken into account, the allegation is against Raju Dubey who is alleged to have made firing against the informant's son. He further submits that two others co-accused having criminal antecedent, though, appellant bears no criminal antecedent. Learned counsel submits that appellant is in custody since 22.07.2023. Charge sheet has been submitted in the case and there is no likelihood of tampering with the prosecution evidence. He further submits that appellant is quite innocent and has falsely been implicated in the case. In the light of aforesaid



facts and circumstances, no case is made out against the appellant under Section SC/ST Act.

5. Learned Special Public Prosecutor for the State and learned counsel for the informant vehemently opposed the prayer of bail of the appellant.

6. Having heard learned counsel for the parties and taking into consideration the facts and circumstances of the case, period of custody, 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 passed by learned A.D.J.-I-cum-Special Court, Siwan in connection with Goreyakothi P.S. Case No. 207 of 2023 is set aside.

7. The appellant is directed to be enlarged on bail in connection with Goreyakothi P.S. Case No. 207 of 2023 on furnishing bail bond of Rs. 10,000/-(ten thousand) with two sureties of the like amount each to the satisfaction of learned A.D.J.-I-cum-Special Court, Siwan subject to following conditions:-

(i) One of the bailors shall be either father or mother or brother or wife of 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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