

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4499 of 2023**

Arising Out of PS. Case No.-235 Year-2018 Thana- ARA MUFFSIL District- Bhojpur

NAGENDRA YADAV SON OF LATE RANJIT YADAV RESIDENT OF
VILLAGE- CHITKUNDI, PS- ARA MUFFASIL, DISTRICT- BHOJPUR

... .. Appellant/s

Versus

1. The State of Bihar
2. REKHA DEVI WIFE OF LATE DHARMENDRA PASWAN RESIDENT OF
VILLAGE- CHITKUNDI, PS- ARA MUFFASIL, DISTT- BHOJPUR

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Shiv Prasad Gupta, Advocate
For the Respondent/s	:	Mr. Usha Kumari 1, Spl.P.P
For the Opposite Party no.2	:	None

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

7 03-04-2024 1. Heard learned counsel for the appellant and learned
Spl.P.P for the State. No one appears for the opposite party no.2
inspite of service of notice.

2. The instant appeal has been preferred against the
order dated 1.9.2023 passed by the learned 1st Additional
Sessions Judge cum Special Judge SC/ST Act, Bhojpur at Ara
whereby the prayer for bail of the appellant in connection with
SC/ST Case no.174 of 2018, arising out of Ara Muffassil P.S
Case no. 235 of 2018 registered under sections 302, 147, 148,
149 and 120B of the Indian Penal Code, section 27 of the Arms
Act and sections 3(1)(r)(s) and 3(2)(va) of the SC and ST
(Prevention of Atrocities) Act was rejected.



3. As per the allegation in the FIR, the appellant is said to have abused the husband of the informant in the name of his caste and it is further stated that he shot the husband of the informant leading to his death.

4. Learned counsel appearing for the appellant submits that the appellant has been falsely implicated in the case. The earlier prayer for bail of the appellant was rejected on 14.12.2020 passed in Cr. Appeal (SJ) no.1724 of 2020. In spite of the appellant having remained in custody for more than 5 years since 6.12.2018 and cooperating in the trial, the appeal has still not concluded nor is there any chance of the same concluding in the near future. No case under the SC/ST Act is made out against the appellant. The appellant undertakes to cooperate in the trial and to abide by all the conditions which may be laid by the Court for his release on bail.

5. The application for bail is opposed by learned Spl.P.P for the State.

6. A report was called for from the learned trial Court. As per the report received contained in letter dated 29.1.2024 of the 1st Additional District and Sessions Judge, Bhojpur at Ara, out of the 8 witnesses, 5 witnesses still remain to be examined. The report further states thatailable warrants were issued on



21.9.2021, non-bailable warrants on 18.12.2021 but still no witness has turned up. Further, a show cause was sent to the SHO of the concerned police station and letters have been sent to the Superintendent of Police, Bhojpur, IG, DIG as also the District Magistrate, Bhojpur. Still no witness has turned up.

7. Having heard learned counsel for the parties and taking into consideration the allegations in the FIR, specially the appellant having remained in custody for about 5 years 4 months since 6.12.2018 and no witness turning up on behalf of the prosecution inspite of the steps having been taken by the learned trial Court as mentioned in its letter dated 29.1.2024, the Court is inclined to allow the instant appeal.

8. The appeal is allowed and the order dated 1.9.2023 passed in B.P no. 4929 of 2023 (SC/ST Case no.174 of 2018) passed by the 1st Additional Sessions Judge, Bhojpur is set aside.

9. The appellant is directed to be enlarged on bail in connection with SC/ST Case no.174 of 2018 (arising out of Ara Muffassil P.S Case no. 235 of 2018) 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 Sessions Judge cum Special Judge, SC/ST Act, Bhojpur at Ara on the following conditions :-



(I) One of the bailors of the appellant shall be a close relative of the appellant.

(II) The appellant shall remain physically present in the trial Court on each date of the trial and shall cooperate in the trial.

(III) In case the appellant is absent on any single date for reasons not to the satisfaction of the learned trial Court or in case the learned trial Court is of the opinion that the trial is being delayed due to non-cooperation on part of the petitioner, the learned trial Court may cancel the bail bond of the petitioner and take him into custody till conclusion of the trial.

(Partha Sarthy, J)

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