

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4987 of 2023

Arising Out of PS. Case No.-479 Year-2021 Thana- GAYA MUFASIL District- Gaya

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Santosh Singh @ Santosh Kumar Singh @ Santosh Kumar Son of Dani Singh
@ Sant Singh Resident of Village- Kumahar Toli (MANIPUR), PS- Muffasil,
Distt- Gaya.

... .. Appellant/s

Versus

1. The State of Bihar BIHAR
2. Rekha Devi Wife of Vijay Pashwan Resident of Village- Manpur,
Shivcharan Lane, Ps- Buniyadganj, Dist- Gaya.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Priya Ranjan

For the Respondent/s : Mrs.Usha Kumari 1

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL ORDER

3 24-01-2024 Learned counsel for the appellant is permitted to

make necessary correction in para 6 of the petition during course

of the day.

2. Heard the parties.

3. The present appeal has been filed against the order

dated 26.09.2023 passed by learned Exclusive Special Judge
SC/ST, Gaya whereby and whereunder the prayer for bail of the
appellant in connection with B.P. No.104/2023 arising out of
Muffasil P.S. Case No.479/2021 for the offence punishable
under Sections 302/120B/34 of the Indian Penal Code 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.



4. As per prosecution case, the informant's son is said to have killed by co-accused Himanshu Kumar and six others FIR named accused persons.

5. Learned counsel for the appellant submits that the appellant is not named in the FIR and his name has been surfaced during course of investigation as mentioned in para 9 of the case diary, as witness Amit Kumar disclosed that the petitioner was present at the place of occurrence. He further submits that the appellant is not in any way connected with the alleged occurrence, as even investigation indicates that he is merely seen at the place of occurrence. There is no specific overt-act attributed against the appellant. The appellant is in judicial custody since 16.08.2023 and bears criminal antecedent of five cases and in all cases he is on bail. He further submits that charge-sheet has been submitted in this case and there is no likelihood of tampering with the prosecution evidence. He further submits that FIR named co-accused Ritesh Kumar @ Bittu Kumar and himanshu Kumar have already been granted bail by the co-ordinate Benches of this Court vide Cr. Appeal (SJ) No.5588/2023 and Cr. Misc. No.25579/2023 and the case of present petitioner stands on better as he is not named in the FIR. He further submits that the appellant has not taken the



caste name of the informant in public view so no offence is made out under the provisions of the SC/ST Act against him.

6. Learned A.P.P. for the State vehemently opposed the prayer of bail of the appellant keeping in view criminal antecedent of the appellant.

7. Having heard learned counsel for the parties and taking into consideration the facts and circumstances of the case, period of custody, co-accused persons have already been granted bail, 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. Accordingly, the appeal is allowed and the impugned order 26.09.2023 in connection with B.P. No.104/2023 arising out of Muffasil P.S. Case No.479/2021 by the learned Exclusive Special Judge SC/ST (POA) Act, Gaya is set aside.

8. The appellant is directed to be enlarged on bail in connection with B.P. No.104/2023 arising out of Muffasil P.S. Case No.479/2021 on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate or its successor court, Gaya, 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 bail application.

(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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