

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.5397 of 2023

Arising Out of PS. Case No.-301 Year-2023 Thana- ARWAL District- Jehanabad

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1. Naushad Khan Son of Vajir Khan R/o vill - Malhi Patti, P.S. - Arwal, Distt. - Arwal
 2. Mehandu Khan Son of Nasim Khan R/o vill - Malhi Patti, P.S. - Arwal, Distt. - Arwal

... .. Appellant/s

Versus

1. The State of Bihar
2. Jamuna Das Son of Late Narayan Das R/o vill - Malhi Patti, P.S. - Arwal, Distt. - Arwal

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Saroj Kumar Sharma, Advocate
For the Resp. No.2	:	Mr.Amrendra Kumar Singh, Advocate
For the State	:	Mr.Sadanand Paswan, SPP

CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA

ORAL ORDER

4 04-04-2024 Heard learned counsel for the appellants, learned Special Public Prosecutor for the State, learned counsel for the informant and perused the case diary.

2. The instant appeal has been filed by the appellants against the order dated 20.07.2023 passed by learned Additional District Judge-1 cum Special Judge SC/ST Act, Jehanabad whereby the prayer for bail of the appellants in connection with Arwal P.S. Case No. 301 of 2023 under Sections 302, 504, 380 of the Indian Penal Code and Section 3/4 of the Daain Act and Section 3(1)(r)(s), 3(2)(va) of SC/ST Act was rejected.



3. The prosecution case, in short, is that on 07.06.2023, all the accused persons including these appellants abused the mother of the informant and called her *daain*. It is further alleged that when the informant went to his *sasural*, all the accused persons committed murder of his mother.

4. Learned counsel for the appellants submits that the appellants have falsely been implicated in the present case only on the basis of suspicion. He further submits that there is no eye-witness to the alleged occurrence. There is a delay of 9 days in lodging the FIR. Learned counsel further submits that except suspicion, there is no any direct or indirect evidence against these appellants as also there is no previous enmity between the parties. There is no independent witness to the alleged occurrence rather the same are interested witnesses. The allegation against the appellants is general and omnibus in nature. Except suspicion, there is no iota of evidence against the appellants corroborating the alleged occurrence. Learned counsel for the appellants further submits that the appellants have not taken the caste name of the informant in public view, hence, no offence under the provisions of SC/ST Act is made out against them. The appellants have no intention to disgrace the image of the informant in public view. The appellants are in



custody since 21.06.2023 and have no criminal antecedent.

5. Learned Special P.P. for the State and the informant have vehemently opposed the prayer for grant of bail to the appellants, stating that during the investigation, witnesses have supported the prosecution version. Learned counsel further submitted that in the post-mortem report, the cause of death is asphyxia due to strangulation and, submits that the nature of offence is heinous and, thus, the appellants do not deserve bail.

6. Considering the aforesaid facts and circumstances of the case and there being no specific allegation of any overt act against the appellants and the period of custody undergone by the appellants coupled with the fact that the appellants have no criminal antecedent, this Court is inclined to allow this appeal. Accordingly, the appeal is allowed and order dated 20.07.2023 passed by learned Additional District Judge-1 cum Special Judge SC/ST Act, Jehanabad, is hereby set aside.

7. Let the appellants, abovenamed, be released on bail on furnishing bail bonds of Rs.10,000/- (Ten thousand) each with two sureties of the like amount each to the satisfaction of Court below/concerned Court in connection with Arwal P.S. Case No. 301 of 2023, subject to the following conditions:

(i) One of the bailors shall be own/close member of



the family of the appellants.

(ii) The appellants shall appear on each and every date fixed at the trial. In case of default in such appearance on two consecutive dates, the Trial Court will have liberty to cancel the bail bonds of the appellants.

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

(Rudra Prakash Mishra, J)

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