

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.5430 of 2023

Arising Out of PS. Case No.-346 Year-2022 Thana- CHAKAND District- Gaya

Vicky Sao @ Vivek Gupta @ Vivek Kumar Gupta Son Of Krishna Sao @
Krishna Saw Resident Of Village- Gannubigha, Police Station- Chakand,
District- Gaya

... .. Appellant/s

Versus

1. The State of Bihar
2. Rajendra Kumar Son Of Aitwar Das Resident Of Village- Gannubigha,
Police Station- Chakand, District- Gaya

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Aryan Singh
For the Respondent/s : Mr.Usha Kumari 1

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL ORDER

7 08-08-2024 Heard learned counsel for the appellant,

informant and learned Special P.P for the State.

The appellant has challenged the order dated

10.10.2023 passed by learned Exclusive Special Judge

SC/ST Act, Gaya in connection with Chakand P.S. Case

No. 346 of 2022 instituted for the offences punishable

under Sections 341, 323, 324, 307, 385/34 of the

Indian Penal Code, Section 27 of the Arms Act and

Sections 3(1)(r)(s), 3(2)(V-a) of the SC/ST Act whereby

his prayer for being released on bail has been rejected.



The prosecution case as per F.I.R is that on 20.10.2022 when the son of the informant Ritesh Kumar was getting back to his home on his bike after purchasing the goods/articles on the eve of Dipawali and when he reached near the saloon of Shakil Miyan at Bitho Mazaar, out of old enmity and with a view to withdraw the earlier case, some miscreants were waiting since before. It is said that petitioner and accused persons as well as 2-3 unknown persons surrounded the informant's son and petitioner shot fire which hit on the stomach of his son and he sustained gunshot injuries.

It is submitted by learned counsel for the appellant that appellant is innocent and he has falsely been implicated in this case. The appellant and the informant are co-villagers and in the background of election rivalry, the present accusation has been levelled. Although the specific overact of allegation of firing is attributed against the appellant as per the prosecution case but during investigation, the statement of



victim/injured does not corroborate with the prosecution case. He has stated in his *Fardbayan* that all accused persons opened fire upon him due to which he sustained gun shot injury. There is major contradiction in victim's statement and commission of alleged offence as per prosecution case. As per his statement, there is general and omnibus allegation against the appellant and others of opening fire. Moreover, he is languishing in judicial custody since 27.07.2023. Co-accused Sunil Kumar has already been granted bail vide order dated 22.06.2023, passed in Cr. Appeal (SJ) No. 116 of 2023, by this Court.

Learned counsel appearing on behalf of the informant and learned Special P.P appearing on behalf of the State have vehemently opposed the prayer for bail of the appellant and submitted that appellant has criminal antecedents of 11 cases. It is also submitted by affidavit in behalf of O.P. No. 2 that injured (Ritesh Kumar) was treated in AIIMS, Patna and discharge



summary is also annexed with it (Annexure R/2), according to which injured has sustained gunshot injuries.

Taking into account the aforesaid facts, this Court deems it appropriate to set aside the order dated 10.10.2023.

Accordingly, this appeal is allowed.

The appellant, above named, is directed to be released on bail **after framing of charge** on furnishing bail bonds of Rs. 10,000/-(ten thousand) with two sureties of the like amount each to the satisfaction of learned Exclusive Special Judge, SC/ST Act, Gaya in connection with Chakand P.S. Case No. 346 of 2022, subject to the following conditions:-

1. Appellant shall co-operate in the trial and shall be present on each and every fixed date and on his absence on two consecutive dates without sufficient reason, his bail bond shall be cancelled by the Court below.



2. if the appellant tampers with the evidence or threatens the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

3. If the appellant repeat the offences of similar nature, as alleged in the present case, the prosecution will be at liberty to move for cancellation of bail.

(Sunil Kumar Panwar, J)

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