

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.5657 of 2023

Arising Out of PS. Case No.-235 Year-2021 Thana- MAGADH MEDICAL COLLEGE
District- Gaya

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Gore Babu @ Anish Kumar @ Kaila Son of Basant Yadav R/o vill -
Kendua, P.S. - Magadh Medical, Distt. -Gaya

... .. Appellant

Versus

1. The State of Bihar
2. Vijay Vishwakarma Son of Late Musahari Mistri R/o vill - Kendua,
P.S. - Magadh Medical, Distt - Gaya

... .. Respondents

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Appearance :

For the Appellant	:	Mr.Manish, Advocate
		Mr. Aryan Singh, Advocate
For the State	:	Mr.Usha Kumari 1, APP
For the O.P. No.2	:	Mrs. Archana Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 03-04-2024 Heard learned counsel for the petitioner and learned

A.P.P. for the State duly assisted by Mrs. Archana Sinha, learned

counsel for the opposite party no. 2.

2. The present appeal has been filed against the order dated 22.11.2023 passed in B.P. No. 904 of 2023 arising out of M.M.C.H. (Magadh Medical) P.S. Case No. 235 of 2021 (Tr. 515 of 2023) registered under Sections 302, 120-B and 34 of the Indian Penal Code and Section 27 of the Arms Act alongwith Section 3(2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act , whereby learned Exclusive Special Judge, SC/ST, Gaya has rejected the prayer for bail of the appellant.

3. Present appeal is well within limitation as prescribed



under Section 14A(3) of the Act.

4. Learned counsel Mrs. Archana Sinha accepted notice for the respondent no. 2/informant.

5. The appellant is named in the F.I.R. and is in custody since 08.09.2021.

6. As per the prosecution story, the informant has alleged that on 03.09.2021 at about 6:30 p.m., his son along with his friend Sintu had gone outside and when reached near the bridge, four accused persons stopped them and took him down the road. He further alleged that Aman Paswan caught his son's hand and Gore Babu @ Kaila fired from the pistol in the stomach of his son, which he had hidden in his waist and thereafter all the accused persons fled away from there. The informant further alleged that Sintu took his injured son to the D.R.S. Hospital and from there the injured was referred to Anugrah Narayan Medical College & Hospital, Gaya (in short the 'A.N.M.C.H.'), where he was declared dead. The informant further stated that during treatment at D.R.S. Hospital, a video of his deceased son was recorded, in which he had taken the name of four assailants.

7. It is submitted by learned counsel appearing on behalf of the appellant that from bare perusal of the First Information Report (in short the 'F.I.R.'), though it appears that informant projected himself as an eye witness of the occurrence, but on its



facial analysis, in view of the statement of eye witness of the occurrence, namely, Sintu Kumar and Jitendra Kumar, whose statements under Section 161 of the Code of Criminal Procedure (in short the "Cr.P.C.") are available in para '5' and '29' of the case diary, the status of informant being an eye witness of the occurrence appears *prima-facie* doubtful and, thus, whole allegation appears founded over hearsay input, as he received from eye witness of the occurrence namely, Sintu Kumar. It is submitted that as per F.I.R., son of informant went outside home alongwith Sintu Kumar only, therefore, informant as eye witness of the occurrence does not appears convincing as per available narration.

8. It is further submitted that as per F.I.R. the specific allegation is available against this appellant to fire upon the son of the informant causing bullet injury in his stomach, but, if the dying declaration, as claimed, which is available in form of video recording, claimed to be recorded at D.R.S. Hospital during treatment of the deceased, it appears that allegation of firing was general and omnibus, doubting version of informant *qua* specific allegation of firing by appellant.

9. Learned counsel further submitted that alleged dying declaration is in the form of video recording, which was produced by brother of the deceased namely, Deepak Kumar in form of Compact Disc (in short the 'CD'). The authenticity/genuineness of the said



'CD' was not tested by the investigating agency during the course of investigation by any FSL Test/scientific examination and, moreover, no mandatory certificate in terms of section 65(B) of the Indian Evidence Act was obtained, in this regard, while submitting the charge-sheet. It is further submitted by the learned counsel that appellant appears involved in one more criminal case, which is of petty nature.

10. Learned counsel for the appellant further submitted that occurrence is not arises out of atrocities as defined under the SC/ST (POA) Act, 1989. In support of his submission, learned counsel has relied upon the legal report of Hon'ble Supreme Court in the case of **B. Venkateswaran and Ors. v. P. Bakthavatchalam** reported in **2023 SCC Online SC 14**.

11. Learned counsel for the State duly assisted by Mrs. Archana Sinha, learned counsel for the opposite party no. 2, while opposing the prayer of bail of the appellant, submitted that prayer of bail of one of the co-accused namely, Aman Kumar @ Aman Paswan granted by this Court through Cr. Appeal (SJ) No. 599 of 2022 has already been set-aside/quashed by Hon'ble Supreme Court through Criminal Appeal No. 616/2024 @ SLP (Crl.) No. 6952/2023 vide order dated 05.02.2024. It is submitted that allegation of firing is specific against the appellant, as per FIR.

12. Making submission to counter aforesaid submission,



as advanced by learned counsel for respondent no. 2/informant, it is submitted by learned counsel for the appellant that as accused/respondent no. 2, failed to appear before the Hon'ble Supreme Court, in Cr. Appeal No. 616/2024 @ SLP (Crl.) No. 6952/2023 vide order dated 05.02.2024, therefore, status of informant doubting his claim as an eye witness of the occurrence, and doubtful evidentiary value of video recording by brother of deceased claiming as dying declaration could not place in detail before the Hon'ble Apex Court, as submitted now.

13. While concluding argument, learned counsel submitted that appellant is in custody since 08.09.2021 and till now only two witnesses were examined in this case and, as such trial is a remote aspect.

14. Let it be so, in view of aforesaid factual and legal submission, as the allegation of firing is specific against this appellant in terms of F.I.R. coupled with the fact that prayer of bail of co-accused namely, Aman Kumar @ Aman Paswan has already been quashed and set-aside by the Hon'ble Supreme Court as stated herein above, the prayer of bail of the appellant is hereby rejected.

15. Accordingly, the present appeal stands dismissed.

(Chandra Shekhar Jha, J.)

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