

Arising Out of PS. Case No.-68 Year-2023 Thana- KALYANPUR District- East Champaran

... .. Appellant/s

Versus

- Respondent/s

Appearance :

For the Appellant/s : Mr.Shakil Ahmad Khan, Advocate
For the Respondent/s : Mr.Binay Krishna, Spl. PP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

5 28-02-2025 Heard learned counsel appearing on behalf of the
appellant and learned Spl. PP appearing for the State

2. The appellant has preferred the present appeal under Section 14A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the Act”) against the refusal of prayer for bail vide order dated 28.08.2024 passed by the learned Special Judge SC/ST Act, East Champaran at Motihari, in connection with Kalyanpur P.S. Case No. 68/2023 registered under Sections 279, 341, 342, 323, 324, 307, 354(B), 504, 506/34 of the Indian Penal Code, and Section 3(i)(r)(s) of



SC/ST Act and later on Section 302 of the Indian Penal Code was added.

3. Present appeal is well within limitation as prescribed under Section 14A(3) of the Act.

4. Informant/opposite party no. 2 duly represented.

5. The appellant is named in F.I.R. and is in custody since 14.08.2024.

6. The allegation against the appellant is to assault the son of the informant on his head, causing head injury and subsequently, out of said injury he fell to the ground, whereafter he was also assaulted by other persons by using *iron rod, lathi* etc. Initially, FIR was lodged for the offence under Section 307 of the Indian Penal Code but as during the course of treatment, the son of the informant died after 16 days, the offence under Section 302 of the IPC was added with FIR.

7. Learned counsel for the appellant submitted that the occurrence was free fight in nature, where both parties received injuries and, therefore, it cannot be said that the appellant was under intention to cause death of the injured



son of the informant. It is submitted that the appellant's side also lodged a case against informant's side including the deceased, which was lodged as Kalyanpur P.S. Case No. 76/2023. It is submitted that death took place after the gap of 16 days but the statement of injured/deceased was not recorded during hospitalization. It is further submitted by learned counsel that the appellant on the date of occurrence was hospitalized with a private doctor at Motihari in connection with his hand fracture and this fact also surfaced during the course of investigation. While concluding argument, it is submitted that petitioner is a man of clean antecedent and, moreover, investigation is completed, for which, charge-sheet has already submitted, as such, there is no chance of tampering with the evidence.

8. Learned counsel for the appellant further submitted that the face of FIR, nowhere suggest that present occurrence took place due to atrocities, as defined within the meaning of Act. It is submitted that if insult is not caused to complainant/informant on the basis of caste, no case is made out under the Act, as it was held in ***State of Madhya***



***Pradesh Vs. Parasram @ Purushottam, as reported in
2015 (153) AIC 276.***

9. Learned Special P.P. Mr. Binay Krishna appearing for the State duly supported by learned counsel for the informant/opposite party no. 2, while opposing the appeal submitted that the informant is the eye-witness of the occurrence, who categorically stated through FIR that this appellant assaulted on head of his son by using iron rod. It is pointed out by learned counsel appearing for the informant that as per autopsy report of the deceased, it was the head injury caused by this appellant appears proved fatal. It is also pointed out by learned counsel that the injured/deceased remains senseless and he never regained to his self during hospitalization as to make his statement before the investigating officer and for same reason, his statement *qua* occurrence was not recorded during investigation.

10. In view of the submissions, as made above and by taking note of fact as the informant is the eye-witness of the occurrence, where specific allegation as to cause fatal assault on head of the injured is available against this



appellant, which also appears corroborating in terms of autopsy report of the son of the informant, accordingly the prayer of bail of above named appellant/accused is rejected herewith.

11. Learned trial court is directed to conclude the trial preferably within one year.

(Chandra Shekhar Jha, J)

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