

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.107 of 2025**

Arising Out of PS. Case No.-44 Year-2023 Thana- KUDHNI District- Kaimur (Bhabua)

Brahma Shankar Rai S/o Kamta Rai @ Kamta Prasad Rai Resident Of
Village- Dumduma, Ps - Kudhni, Distt.- Kaimur (Bhabua), Bihar

... .. Appellant/s

Versus

1. The State of Bihar
2. Guddu Mushar S/o Sudama Mushar R/o vill - Kudhani, P.s.- Kudhani, Distt.- Kaimur (Bhabua)

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Y.V. Giri, Sr. Adv. Mr. Santosh Kumar Pandey, Adv.
For the Respondent/s	:	Mr. Sadanand Paswan, SPP

**CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH
MISHRA**

ORAL ORDER

3 07-02-2025 Heard learned counsel for the appellant, learned Special Public Prosecutor for the State. Perused the case diary called for in Cr. App (SJ) No. 5508 of 2024.

2. The instant appeal has been filed by the appellant against the order dated 02.12.2024 passed by learned District and Additional Sessions Judge-1 cum Special Judge, Kaimur at Bhabua whereby the prayer for bail of the appellant in connection with Kudhni P.S. Case No. 44 of 2023 under Sections 147, 148, 149, 302 of the I.P.C. and Section 27 of the Arms Act and Sections 3(2)(v) of SC/ST (POA) Act was rejected.

3. Prosecution case, in short, is that all the accused



persons including the appellant carrying weapons in their hands came on cars and bikes at the place of occurrence. On seeing the accused persons, the Informant and other persons started fleeing from there. It is alleged that the co-accused Arvind Rai @ Bagrudan Rai fired a gun shot at Santosh Mushar and, as a result, he died on the spot.

4. Learned counsel for the appellant submits that the appellant is innocent and has falsely been implicated in the present case as several litigation is going on between the parties. Learned counsel for the appellant submits that earlier the appellant has moved anticipatory before this Court in Cr. Appeal (SJ) No. 736 of 2024 along with other appellants which was dismissed on 04.10.2024. Thereafter, the appellant moved before the Apex Court vide Special Leave & Appeal (Cri.) No. 14835 of 2024 which was also dismissed on 25.10.2024. In the present F.I.R., altogether sixteen persons have been made accused and all belongs to gotia family to each other. There is no specific or direct allegation of any overt act against the appellant rather the same are general and omnibus in nature. The specific allegation of firing is against the co-accused Arvind Rai @ Bagrudan Rai. The appellant was the member of mob. The appellant has not taken the caste name of the informant in public



view and, hence, no offence is made out under the SC/ST Act. There is admitted land dispute between the parties. Nothing incriminating has been recovered from the physical/conscious possession of the appellant. The proceedings under Section 144 Cr.P.C. vide Case No. 43(M)/2023 is also going on between the parties. Charge-sheet has been submitted in this case. The appellant is in custody since 02.12.2024 and has no criminal antecedent.

5. Learned Special P.P. for the State has vehemently opposed the prayer for grant of bail to the appellant, stating that several witnesses at Para 10, 88, 89 and 95 of the case diary have supported the case of prosecution. The anticipatory bail application of the appellant has already been rejected by this Court as well as by the Hon'ble Apex Court.

6. Considering the aforesaid facts and circumstances of the case, the period of custody undergone by the appellant, the appellant having no criminal antecedent as also there being no specific allegation against the appellant, this Court is inclined to allow this appeal. Accordingly, the appeal is allowed and order dated 02.12.2024 passed by the learned District and Additional Sessions Judge-1 cum Special Judge, Kaimur at Bhabua, is hereby set aside.



7. Let the appellant, abovenamed, be released on bail on furnishing bail bonds of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of Court below/concerned Court in connection with Kudhni P.S. Case No. 44 of 2023.

(Rudra Prakash Mishra, J)

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