

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.437 of 2022

Arising Out of PS. Case No.-704 Year-2017 Thana- BIHTA District- Patna

Chandan Kumar @ Chandan Singh, Son of Nathun Sihgh, R/O- Basaurha,
P.S.- Bihta, District- Patna

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Avinash Kumar Singh, Advocate
For the State	:	Mr. Satya Narayan Prasad, Addl PP
For the Informant	:	Mr. Sanjay Kumar, Advocate
		Mr. Pushendra Priyadarshi, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

7 11-11-2024 Heard Mr. Avinash Kumar Singh, learned counsel for the appellant, Mr. Sanjay Kumar, learned counsel for the informant and Mr. Satya Narayan Prasad, learned Additional Public Prosecutor for the State.

2. The records of this case have been placed before this Court to consider the prayer of the appellant for suspension of his sentence and release on bail during pendency of the appeal.

3. The sole appellant in this case has been convicted vide judgment dated 28.03.2022 and sentenced vide order dated 01.04.2022 by learned Additional District Judge, XXIV, Patna in connection with Sessions Trial No. 81 of 2018 arising out of



Bihta P.S. Case No. 704 of 2017 for the offences punishable under Section 120B of the Indian Penal Code (in short 'IPC') read with Sections 302/34 and 326/34 IPC. He has been awarded sentence of rigorous imprisonment for life and to pay a fine of Rs.20,000/- under Section 120B IPC read with Sections 302/34 and 326/34 IPC. In case of default of payment of fine, he has to further undergo simple imprisonment for three months.

4. As per the prosecution story, the informant alleged in the FIR that on 15.09.2017 at about 05:45 PM, the informant along with the deceased, namely, Nirbhay Kumar Singh were standing near the main gate of cinema hall and the deceased was standing at some distance. The informant heard the sound of gun shots and when he turned, he saw that his brother was being surrounded by three persons lashed with weapon. The informant saw that his brother fell on the road. When the informant reached near his brother, he saw his brother soaked in blood lying on the ground and the accused persons fled towards the north direction towards Kerosene Oil depot of one Raj Kumar Singh.

5. Learned counsel for the appellant submits that the appellant is not named in the first information report and it would appear from the materials on the record that his name



transpired in the confessional statement of the co-accused. He is said to be one of the persons who had participated in hatching conspiracy to kill Nirbhay Singh who was the representative of the local business people in the market and he was allegedly killed for raising a protest against the demand of '*rangdari*'.

6. Learned counsel submits that in course of trial, though CCTV footage of certain establishments of the locality have been brought on record and the prosecution claimed to have identified the shooter, however, there is no cogent material against the appellant to establish that he was one of the conspirators.

7. Mr. Sanjay Kumar, learned counsel for the informant and Mr. Satya Narayan Prasad, learned Additional Public Prosecutor for the State have jointly opposed the prayer of the appellant. They have submitted that in case of a co-convict, namely, Pappu Singh (Criminal Appeal (DB) No. 344 of 2022) whose case would stand on similar footing with the appellant, this Court has earlier rejected his prayer after taking a view upon his criminal antecedents as well as the observations of the Hon'ble Supreme Court in the case of **Omprakash Sahni Vs. Jai Shankar Chaudhary & Another in Criminal Appeal Nos. 1331-1332 of 2023**. It is further submitted that the co-



convict Pappu Singh had taken up the matter before the Hon'ble Supreme Court in Special Leave to Appeal (Criminal) No. 12231 of 2023 which has been dismissed after the appellant sought permission to withdraw the petition. A copy of the order dated 13.10.2023 passed by the Hon'ble Supreme Court in Special Leave to Appeal (Criminal) No. 12231 of 2023 has been placed before this Court. It is submitted that the present appellant has got two criminal antecedents.

8. It is submitted that about twenty days prior to the occurrence, a gang of criminals had performed a '*gunda march*' to terrorize the traders and public of Bihta to collect '*rangdari*' tax which was being protested by the deceased being the President of Bihta Traders' Association. It is because of this protest he was killed and this appellant has participated in this conspiracy.

9. Learned counsel for the appellant has at this stage submitted that the case of this appellant would be distinguishable from that of Pappu Singh. It is submitted that Pappu Singh had seven criminal antecedents and even his mobile was put on surveillance and the technical evidence with regard to the tower location of the mobile number of Pappu Singh has been proved in evidence whereas the mobile of this



appellant was not put on surveillance and no technical data in this regard has been brought on the record by the prosecution.

10. As regard the custody, it is submitted that the appellant was absconding for a brief period but he had surrendered on 07.03.2018 whereafter after about ten months, he was granted bail and presently, he is in custody since 28.03.2022.

11. Learned counsel for the informant has further pointed out that in this case, three accused persons who were facing trial absconded on the date of judgment. The case of one of the accused was separated on the ground that he was a juvenile, till date, the trial has not been concluded in the learned Children's Court which would be evident from the observations of the learned trial court in the impugned judgment itself. Learned counsel has pointed out that the trial has yet not been concluded despite the direction of the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) Nos. 3858-3859 of 2020.

12. We have heard learned counsel for the parties and learned Additional Public Prosecutor for the State. For purpose of consideration of the prayer for bail of the appellant, we have prima-facie gone through the evidences on the record. At this stage, we find that the case of Pappu Singh and that of this



appellant are similarly situated. Learned counsel for the appellant has though made efforts to take us through a threadbare discussion into the evidences on the record in order to distinguish the case of the appellant from that of Pappu Singh but we are of the considered opinion that this is not the stage where we may go into such threadbare discussion.

13. This Court while rejecting the prayer for bail of Pappu Singh has observed that from the impugned judgment and order of the learned trial court, it cannot be concluded at this stage that this appellant has fair chance of acquittal. The same view is taken by this Court in this case as well.

14. We are not inclined to grant suspension of sentence and release of the appellant on bail. The prayer is refused.

15. Let this appeal be tagged with Criminal Appeal (DB) No. 344 of 2022. If the appellant is so advised, he may file an application seeking early hearing of the appeal.

16. At this stage, this Court is of the opinion that what has been brought to the notice of this Court by learned counsel for the informant about the pendency of the trial despite the direction of the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) Nos. 3858-3859 of 2020 is required to be brought



to the notice of the Administrative Committee of this Court for some immediate action to insure that the order of the Hon'ble Supreme Court is duly complied with and the reason for non-compliance be also sought for from all concerned.

17. Let a copy of this order be sent to the Hon'ble Inspecting Judge of Patna Judgeship for information and further action.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

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