

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.542 of 2024**

Arising Out of PS. Case No.-96 Year-2021 Thana- BADHAILA District- Rohtas

Sheo Narayan Mahto @ Sheo Narayan Singh @ Shiv Narayan Singh Son Of
Late Suryabali Mahto Resident Of Village - Shiyawak, P.S. - Baghaila,
District - Rohtas

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Siddharth Harsh, Advocate
	:	Mr. Shashank Chauhan, Advocate
For the Respondent	:	Mr. Parmeshwar Mehta, A.P.P.
For the Informant	:	Mr. Makardhwaj Upadhyay, Advocate

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL ORDER**

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

4 28-08-2024 Heard Mr. Siddharth Harsh, learned Advocate for the appellant, Mr. Makardhwaj Upadhyay, learned Advocate for the informant and Mr. Parmeshwar Mehta, learned A.P.P. for the Respondent-State.

2. This appeal has been filed on behalf of the appellant under Section 374(2) read with Section 389(1) of the Code of Criminal Procedure, 1973 against the judgment of conviction dated 03.04.2024 and order of sentence dated 09.04.2024 rendered by the learned Court of Additional District & Sessions Judge 19th, Rohtas at Sasaram in Sessions Trial No. 101 of 2022, arising out of Baghaila P.S. Case No. 96 of 2021



where-under and whereby, the learned Trial Court has convicted and sentenced the accused-appellant in following manner:-

i) To undergo rigorous imprisonment for life and to pay a fine of Rs. 20,000/- for the offences under Sections 302/149 of the Indian Penal Code.

ii) To undergo rigorous imprisonment for a term of one year and to pay a fine of Rs. 500/- for the offences under Sections 342/149 of the Indian Penal Code.

iii) To undergo imprisonment for a term of one year and to pay a fine of Rs. 500/- for the offence under Section 147 of the Indian Penal Code.

iv) To undergo imprisonment for a term of one year and to pay a fine of Rs. 1,000/- for the offences under Sections 504/149 of the Indian Penal Code

v) To undergo imprisonment for a term of two year and to pay a fine of Rs. 1,000/- for the offence under Section 148 of the Indian Penal Code. The appellant has further been directed to undergo imprisonment for 15 days for each respective offence in case of default in payment of fine.

vi) To undergo rigorous imprisonment for a term of four years and to pay a fine of Rs. 3,000/- for the offence under Section 27 of the Arms Act and to undergo imprisonment for 15



days in case of default in payment of fine. All the sentences have been directed to run concurrently.

3. Learned Advocate for the appellant has submitted that the appeal filed by the appellant has been admitted by this Court and at present the appellant prays for grant of bail and for suspension of sentence imposed by the learned trial court till final disposal of the appeal.

4. Learned Advocate for the appellant would mainly submit that the FIR is antedated. In support of the said contention, learned Advocate has referred the cross-examination of the deposition of the informant (PW-2), more particularly, in paragraph-9 thereof. It is submitted that though it has been mentioned in the FIR that the same was registered at 23:30 hours on 11.12.2021, copy of the same was sent to the concerned Magistrate Court after a period of three days. Learned Advocate, submitted that even inquest report is not duly proved and original copy of the inquest report was not produced before the Court. Thereafter learned Advocate submits that even accepting the story of the prosecution as it is, though the appellant was having country-made pistol in his hand, he did not fire from the said pistol and the only allegation against him is that he is the order-giver and one Bashishthha Singh shot fire on



the deceased and the deceased sustained one firearm injury. Thus, learned Advocate submits that the appellant has been convicted with the aid of Section 149 of the Indian Penal Code. Learned Advocate, therefore, urged that the appellant be released on bail as the present appeal is of the year 2024 and the same is not likely to be heard in near future.

5. On the other hand, learned A.P.P. for the Respondent-State and learned Advocate for the informant have opposed the prayer for grant of bail. It is mainly contended that appellant along with the other co-accused came at the place of occurrence with deadly weapons. The appellant was carrying country-made pistol and he gave order to Bashishthha Singh to kill the deceased and thereafter Bashishthha Singh fired the shot. It is further submitted that PW-2 (informant) is eye-witness to the incident in question. He has supported the case of the prosecution and the medical evidence also supports the version of the eye-witness. Learned Advocate, therefore, urged that the trial court has rightly convicted the appellant for the offences punishable under Section 302 read with Section 149 of the IPC and he has been sentenced to suffer life imprisonment, he may not be released on bail.

6. We have considered the submissions canvassed by



the learned Advocates appearing for the parties. We have also perused the materials placed on record and the trial court records. *Prima facie*, it would emerge from the record that the informant has admitted in paragraph-9 of his cross-examination that his fardbeyan was recorded on the next date of occurrence. Further, it is not in dispute that copy of the FIR was sent to the Magistrate Court after three days. It is also not in dispute that the original copy of the inquest report was not produced before the Court. Even otherwise, the allegation levelled against the appellant is that he is the order giver and instigated the co-accused Bashishthha Singh to kill the deceased and thereafter Bashishthha Singh fired the shot on the deceased. It is also the case of the prosecution that the appellant was carrying country-made pistol, however, it is not the case of the prosecution that he has used the said firearm.

7. Looking to the role attributed to the appellant herein coupled with the fact that the present appeal is of the year 2024 and the same is not likely to be heard in near future, we are of the view that the case of the appellant for grant of bail deserves consideration.

8. Accordingly, appellant is ordered to be released on bail during pendency of the present appeal on executing bond of



Rs. 15,000/- (Rupees Fifteen Thousand) and upon furnishing two sureties of the like amount each to the satisfaction of learned learned Court of Additional District & Sessions Judge 19th, Rohtas at Sasaram in Sessions Trial No. 101 of 2022, arising out of Baghaila P.S. Case No. 96 of 2021 and the sentence imposed by the trial court is suspended so far as this appellant is concerned.

9. It is clarified that the aforesaid observations are the tentative observations made by this Court while considering request of the appellant for grant of bail.

10. The appellant should co-operate in this court till disposal of the appeal.

11. The sentence shall remain suspended in the meanwhile. Realisation of fine shall remain stayed during the pendency of this appeal.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

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