

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.820 of 2022

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

PANKAJ @ PHAKKAD @ PANKAJ SINGH SON OF RAM NATH SINGH
R/O BASAURHA, P.S.- BIHTA, DISTRICT- PATNA

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant : Mr. Amit Pawan, Advocate
Mr. Tushar Anand, Advocate
Mr. Hemant Kumar, Advocate
For the Respondent : Mr. Satya Narayan Prasad, APP

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

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

7 17-02-2026 Heard Mr. Amit Pawan, learned counsel for the appellant through *on-line*/virtual mode assisted by Mr. Tushar Anand, Advocate and Mr. Satya Narayan Prasad, learned Additional Public Prosecutor for the State.

2. The record of this appeal has 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 appellant has also filed an interlocutory application, being I.A. No. 02 of 2025, making a similar prayer for suspension of his sentence and release on bail during pendency of the appeal as has been made in the memorandum of



appeal itself.

4. The appellant has been convicted for the offence punishable under Sections 120B read with 302/34 and 326/34 of the Indian Penal Code (hereinafter referred to as 'the IPC') vide judgment dated 01.08.2022 passed by learned Additional District & Sessions Judge-XXIV, Patna, in Sessions Trial No. 81B of 2018 (CIS No. 1260081 of 2018), arising out of Bihta P.S. Case No. 704 of 2017, and sentenced, vide order dated 08.08.2022, to undergo rigorous imprisonment for life for the offences under Sections 120B read with 302/34 and 326/34 and a fine of Rs.20,000/- and in default of payment of fine, he has to further undergo simple imprisonment for three months.

5. The prosecution story is based on the *fard-beyan* of Ajay Kumar (PW 4), who is the brother of the deceased. In his *fard-beyan*, the informant has stated that his family is engaged in business, he is five brothers and they have a cinema hall in Bihta known as 'Uday Chitra Mandir'. On 15.09.2017, in the evening, he and his brother were getting the cleanliness of the hall and the nearby areas. At about 05:45 PM, when both of them were in front of the main gate of the cinema hall and his brother, Nirbhay Singh, was at a distance of ten steps ahead to him, all of a sudden firing started. The informant found that his



brother Nirbhay Singh was surrounded by three persons, who were armed with pistols. The brother of the informant fell down on the road. The informant ran towards his brother, who had fallen down and was in pool of blood, the criminal involved in the occurrence fled away raising the weapons in their hands towards the kerosene oil depot of Raj Kumar Singh. The informant gave some description of the miscreants who were fleeing away. He disclosed that his brother had no enmity with anyone and that he can identify the criminals on seeing them.

6. It appears from the materials on record that in course of investigation, it was revealed that the main assailant Amit Singh, this appellant and some others were involved in the occurrence. So far as this appellant is concerned, it has come in the evidence that the main assailant Amit Singh was using the whatsapp number of the mobile phone of this appellant. The appellant has been convicted with the aid of Section 120B IPC.

7. At the outset, Mr. Amit Pawan, learned counsel for the appellant has placed before this Court a copy of the order dated 18.08.2025 passed by the Hon'ble Supreme Court in the case of Chandan Kumar @ Chandan Singh (S.L.A. (Crl.) No. 5228 of 2025), who was separately tried in Sessions Trial No. 81 of 2018. It is submitted that in the case of Chandan Kumar @



Chandan Singh, the Hon'ble Supreme Court, having noticed that he was not present at the time of commission of crime, however, he had been convicted with the aid of Section 34 IPC and that he had already undergone incarceration for almost four year, directed suspension of his sentence and ordered to release him on bail. Learned counsel submits that the case of the present appellant would stand on similar footing with that of Chandan Kumar @ Chandan Singh.

8. Learned counsel has drawn the attention of this Court towards the evidence of PW 4 (informant), who has stated that he came to know that accused Pappu Singh, Akshay @ Golu, Lalu Mahto @ Mithun, Pankaj Singh @ Fakkad, Manish @ Lakshman, Vishal @ Rikki and Chandan Singh were involved in the occurrence. He had, however, identified three persons, who were involved in the firing upon the deceased. Though he did not know the name of those accused, but in the dock, he identified Amit, Shankar Choudhary and Shabir.

9. Learned counsel submits that PW 1, Ratnesh Kumar, has stated that first firing was done by Amit Kumar and other two firing were done by two accused persons, due to which Nirbhay Singh fell down and died. This witness had seen that two motorcycles were parked near the kerosene oil depot



and he has further stated that the reason of the occurrence is that prior to 20 days of occurrence, the gang of co-accused Pappu Singh and Amit Singh were riding with arms to create terror in the Bihta Market, but Nirbhay Singh (deceased), being the president of the Bihta Traders Association asked the businessmen not to be terrorized or to part with money and similar statement came in the newspaper and, therefore, Nirbhay Singh was murdered. PW 1 identified co-accused Shabir, Pappu, Shankar Choudhary and Golu in the court room.

10. In the aforementioned materials on record, learned counsel submits that this appellant would deserve suspension of sentence and release on bail.

11. On the other hand, learned Additional Public Prosecutor for the State has brought to the notice of this Court the fact that while this appellant was one of the accused facing the charges in Sessions Trial No. 81 of 2018, when the records were kept for judgment, three accused persons, namely, Shankar Choudhary, Vishal Ram @ Vishal Raj @ Rikki @ Saurabh and Pankaj @ Fakkad (the appellant) did not appear, therefore, their bail bonds were cancelled and the records were separated. It is submitted that the case of this appellant would not stand on similar footing much less on identical footing with Chandan



Kumar @ Chandan Singh. It is pointed out that Chandan Kumar @ Chandan Singh seems to have been granted suspension of sentence taking note of the fact that he had been convicted with the aid of Section 34 IPC. It is stated that in fact Chandan Kumar @ Chandan Singh was also convicted with the aid of Section 120B IPC, but in the case of Chandan Kumar @ Chandan Singh, the evidences on record were not based on any scientific investigation and even though he was said to be a member of the gang, who was involved in the conspiracy, unlike the present appellant there was no electronic evidence on the record against him. In the case of this appellant, it is pointed out that there is overwhelming material in the form of electronic evidences, which have been brought on record as Exhibit P-21 to Exhibit 21/77.

12. Md. Javed Akhtar (PW 7), who is the Nodal Officer of Bharti Airtel, has identified the C.A.F. of five mobile number, which has been marked as Exhibit 15 and one of them is the mobile number 9771822359, which is in the name of this appellant but was being used by the main assailant Amit.

13. Attention of this Court has been drawn towards paragraph 13 of the judgment of the learned trial court and the evidences of the IO (PW 6). Learned Additional Public



Prosecutor submits that these electronic evidences are being duly proved in accordance with Section 65B of the Evidence Act. It is consistent evidence of the prosecution that Nirbhay Singh was killed because he was opposing demand of *rangdari* by the criminals in the Bihta Bazar.

14. Learned Additional Public Prosecutor submits that Amit Singh had several criminal antecedents of demand of *rangdari* and other serious offences. So far as this appellant is concerned, he was also charge sheeted for the offences under Section 341, 323, 387 and 504 IPC. However, recent judgment of the trial court in the said case being GR/CIS-1970 of 2017, arising out of Bihta P.S. Case No. 420 of 2017, would show that no witness on behalf of the prosecution turned up to give evidence against the appellant. Learned Additional Public Prosecutor has, therefore, highlighted that the kind of threat perception to the witnesses have, in fact, restrained them from coming in the dock to depose against the appellant in the case and ultimately, the trial court acquitted the appellant. Prayer has been made to reject the prayer.

15. Having regard to the entire submissions recorded hereinabove and the evidences, which we have gone through, at this stage, for the purposes of consideration of prayer of the



appellant for suspension of sentence and his release on bail as also keeping in view the judgment of the Hon'ble Supreme Court in the case of *Omprakash Sahni vs. Jai Shankar Chaudhary and Anr.* reported in (2023) 6 SCC 123 reiterated in the case of *Janardan Ray vs. The State of Bihar and Anr.* passed in **Cr. Appeal Nos. 1892-1893 of 2025** on 9th April, 2025, this Court is of the considered opinion that at this stage there are *prima facie* materials on record showing close connection of the appellant with the main assailant of the deceased. The electronic evidences on the record and the evidence of the IO (PW 6) are such that this Court cannot go into a threadbare discussion into the same in order to grant benefit of suspension of sentence to the appellant.

16. The case of the appellant is clearly distinguishable with that of Chandan Kumar @ Chandan Singh as pointed out by the learned Additional Public Prosecutor for the State.

17. In presence of the entire evidences showing the conspiracy in the commission of the murder of Nirbhay Singh, who was the President of the Local Traders Association and the deposition of the witnesses showing that it was because he was opposing demand of *rangdari* by the criminals, we are of the opinion that it is not a fit case for grant of suspension of



sentence and release on bail. Prayer is rejected.

18. I.A. No. 02 of 2025 is dismissed.

19. It is clarified that the observations made hereinabove are only *prima facie* and tentative in nature for purpose of consideration of bail of the appellant which would not cause prejudice to either of the parties.

20. List this case for hearing on its turn.

(Rajeev Ranjan Prasad, J)

(Praveen Kumar, J)

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