

(2023) 04 PAT CK 0074

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 1284 Of 2023

Raju Kumar

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 26-04-2023

Acts Referred:

Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 — Section 3(2)(v), 14A(2)
Indian Penal Code, 1860 — Section 34, 120B, 302
Arms Act, 1959 — Section 25(1b)(a), 26, 35
Evidence Act, 1872 — Section 25, 26, 27

Citation : (2023) 04 PAT CK 0074

Hon'ble Judges : Harish Kumar, J

Bench : Single Bench

Advocate : Vaishnavi Singh, Sadanand Paswan

Final Decision : Allowed

Judgement

Heard Ms. Vaishnavi Singh, learned counsel for the appellant and Mr. Sadanand Paswan, learned Special Public Prosecutor for the State.

This is the second attempt wherein the appellant is renewing his prayer for bail by filing the instant appeal under Section 14(A)(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against the refusal of prayer for bail vide order dated 10.01.2023 passed by learned A.D.J.-I-cum-Special Judge, SC/ST, Katihar in Muffasil P.S. Case No. 101 of 2021 registered under Sections 302, 120B read with 34 of the Indian Penal Code, Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Sections 25(1-b)a, 26 and 35 of the Arms Act.

Earlier, the prayer for bail of the appellant was rejected vide order dated 20.05.2022 passed in Cr. Misc. No. 58750 of 2021 after taking into consideration the fact that there is confession leading to recovery, apart from the fact that during course of investigation, complicity of the informant has been found and

she has also been made accused in this case.

Vide order dated 29.03.2023, the status report was called for from the learned Trial Court and it has been apprised to this Court that though all the charge-sheet witnesses have been examined, yet nine other official witnesses are to be examined.

Learned counsel for the appellant submits at the Bar that besides the confessional statement before the police which is not admissible in law, Section 25 of the Evidence Act clearly specifies that no confession made before the police shall be proved against the person accused of any offence. Section 26 of the Evidence Act specifies that the confession by an accused while in custody of the police not to be proved against him. However, Section 27 of the Evidence Act is an exception to the aforesaid provision wherein it has been made clear that the confession leading to recovery may be proved. In the instant case, the accused has given narration of the incident before the police but in view of the aforesaid provision, only confession to the extent of leading to recovery of the weapon may be proved as admissible against the appellant. The remaining part of the statement cannot be admissible under the Evidence Act. She further submits that moreover the weapon which is said to have been recovered that has never been examined as to whether the said weapon was used in the commission of crime or not. Lastly, she submits that the appellant is in custody since 24.06.2021.

Learned Spl. P.P. for the State opposes the prayer of the appellant and submits that earlier the prayer for bail of the appellant has been rejected on merit and there is no changed circumstance warranting reconsideration his prayer for bail.

Having considered the submissions made on behalf of the appellant and considering the fact that there is no likelihood of the conclusion of the trial in near future, apart from period of custody and having fair antecedent, let the appellant, named above, 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 learned A.D.J.-I-cum-Special Judge, SC/ST, Katihar in connection with Muffasil P.S. Case No. 101 of 2021, subject to the condition that one of the bailors will be the close relatives of the appellant with further conditions which are as follows:-

- (i) The appellant will cooperate in conclusion of the trial.
- (ii) He will remain present on each and every date of trial till disposal of the case.
- (iii) He will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.
- (iv) In the event of default of two consecutive dates without any cogent reason, his bail bonds will liable to be cancelled.

Accordingly, the impugned order dated 10.01.2023 passed by learned A.D.J.-I-cum-Special Judge, SC/ST, Katihar in Muffasil P.S. Case No. 101 of 2021, is set

aside and the appeal stands allowed.