

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J.) No.224 of 2021**

1. Guddu Kumar
2. Prakash Hazra @ Prakash Kumar Hazra
..... Appellants.

-Versus-

1. The State of Jharkhand
2. Sanju Toppo
..... Respondents.

CORAM : HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Appellants : Mr. Mahesh Tewari, Advocate
For the State : Mr. Abhay Kumar Tiwari, A.P.P.
For Respondent no.2: Mr. Lukesh Kumar, Advocate

Order No.05

Date: 10.09.2021

This case is taken up through video conferencing.

The present criminal appeal has been filed against the order dated 9th June, 2021 passed by the learned Special Judge, SC/ST, Dhanbad in SC/ST Case no.304 of 2018, arising out of Barwadda P.S. Case no.192 of 2018, for the offence under Sections 376(D), 307 and 120B of the Indian Penal Code and Section 3(1)(w)(i)/3(2)(Va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, whereby the learned court has rejected the appellants' prayer for bail.

Learned counsel for the appellants submits that earlier Cr. Appeal (SJ) No.1661 of 2018 filed by the appellants with similar prayer was rejected by this Court vide order dated 10th May, 2019. However, the appellants have filed the present criminal appeal, primarily on the ground that similarly situated co-accused- Kundan Hazra has been granted bail by a coordinate Bench of this Court vide order dated 8th April, 2021 passed in Cr. Appeal (S.J.) No.554 of 2020. It is further submitted that the victim has already been examined in the trial as P.W.2 and on perusal of her deposition, it would be evident that the main allegation is against co-accused- Paritosh Pandey. The appellants are in judicial custody since 27th September, 2018 and the trial has not yet concluded. At least considering the fact that co-accused- Kundan Hazra has already been released on bail and that the appellants are in judicial custody for about three years, the impugned order dated 9th June, 2021 passed by the learned court below may be set aside and the appellants may be directed to be released on bail.

Mr. Abhay Kumar Tiwari, learned A.P.P. and Mr. Lukesh Kumar, learned counsel for the respondent no.2 jointly submit that vide order dated 8th April, 2021 passed in Cr. Appeal (S.J.) No.554 of 2020, the learned Trial Court was directed to hear the arguments of the parties either through video conferencing or in physical court with further direction that if the said case is not decided within one month from the date of receipt/production of the copy of the said order, the court below shall release the appellant-Kundan Hazra of the said case on bail on the terms and conditions as it may deem fit and proper to impose. However, at present, the situation is different as the second wave of Covid-19 pandemic has almost come to an end and the Trial Courts have started functioning properly. It is also submitted that the trial is at the stage of argument and hence the appellants may not be given the privilege of bail.

Heard learned counsel for the parties.

On perusal of the order dated 8th April, 2021 passed in Cr. Appeal (SJ) No.554 of 2020 (Kundan Hazra Vs. the State of Jharkhand & Anr.), it appears that the Trial Court was directed to hear the arguments of both the parties either through video conferencing or through physical mode with further direction that if the trial of the said case is not concluded within one month from the date of receipt/production of the copy of the order, the court below shall release the said appellant on bail. Therefore, I find substance in the arguments of the learned A.P.P. and the learned counsel for the respondent no.2 that though the case of co-accused- Kundan Hazra is similarly situated to that of the present appellants, yet he was granted bail in altogether different circumstance, as during the said period the Trial Court was not functioning due to second wave of Covid-19 pandemic. However, now the situation is different, as the Trial Court has even started functioning through physical mode. The trial is also at concluding stage and the same has been fixed for argument.

Hence, I do not find appropriate to interfere with the impugned order dated 9th June, 2021 passed by the learned Special Judge, SC/ST, Dhanbad in SC/ST Case no.304 of 2018. The present criminal appeal is, accordingly, dismissed.

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The Trial Court is, however, directed to conclude the trial without any undue delay preferably within a period of two months from the date of receipt/production of a copy of this order.

Sanjay/

(Rajesh Shankar, J.)