

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
(Criminal Appellate Jurisdiction)

**Criminal Appeal (DB) No. 938 of 2018**

*(Against the judgment of conviction dated 04<sup>th</sup> August 2018 and the order of sentence dated 06<sup>th</sup> August 2018 passed by the learned Additional Sessions Judge-1<sup>st</sup>, Rajmahal in Sessions Trial No. 23 of 2013)*

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Noor Islam, Aged about 35 years, son of late Iztarul Seikh @ Izabul Sheikh,  
Resident of village Madhopara, PO & PS Barharwa, District Sahibganj.

.... .. Appellant

**Versus**

The State of Jharkhand

... .. Respondent

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**CORAM:                   SRI ANANDA SEN, J.**  
**SRI SUBHASH CHAND, J.**

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For the Appellant           : Mr. Gautam Kumar, Advocate  
For the State                 : Mr. Pankaj Kumar, PP  
                                      Mr. Tarun Kumar, APP

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**J U D G M E N T**

**CAV On 02<sup>nd</sup> July 2024**

**Pronounced on 22 July 2024**

**Per, Subhash Chand, J.**

The appellant has preferred this appeal against the judgment of conviction dated 04.08.2018 and order of sentence dated 06.08.2018 passed by the learned Additional Sessions Judge 1<sup>st</sup>, Rajmahal in Sessions Trial No. 23 of 2013, whereby the appellant has been convicted for offence punishable under section 302 of the Indian Penal Code and has been sentenced to undergo imprisonment for life and fine of Rs.10,000/- and in default of payment of fine to further undergo simple imprisonment of three months.

2.           The brief facts of prosecution case leading to this criminal appeal are that informant Shayed Seikh has alleged in *fardbeyan* that his daughter was married with Noor Islam 10 years ago. She has one son and one daughter out of the wedlock. His son-in-law has been torturing his

daughter for last 7-8 years. Many times, *panchayat* was also held with no result. He is bent upon to remarry with another lady. On 27.10.2012 it was the occasion of 'Bakrid' at 12 O'clock in the night his *natni* Jasmira Khatoon came to his door and told that her father had killed her mother. In the meantime, he, his son Badruddin Seikh, wife Tanjila Khatoon came to the house of the son-in-law Noor Islam and found his daughter Farida Khatoon dead. She was stabbed with the dagger in the stomach. On raising alarm persons of the locality attracted there. His daughter died sustaining injury. His son-in-law with intent to marry with another lady had committed the murder of his daughter.

3. On this written information, Case Crime No. 153 of 2012 was registered with the Police Station Barhawa under Section 302 of the Indian Penal Code against Noor Islam. The investigating officer completed the investigation and filed charge-sheet against Noor Islam under Section 302 of IPC to the Court of Magistrate concerned who took the cognizance on the charge-sheet and committed the case for trial to the Court of Sessions Judge-1<sup>st</sup>, Rajmahal who further transferred the same for trial to the Court of learned Additional Sessions Judge-1<sup>st</sup>, Rajmahal.

4. The Trial Court framed the charge against Noor Islam under Section 302 of Indian Penal Code and same was read over and explained to him who denied the charge and demanded to face the trial.

5. On behalf of prosecution to prove the charge against the accused in oral evidence examined altogether 10 witnesses PW1- Badruddin Seikh, PW2- Jasmira Khatoon, PW3- Tanjila Khatoon, PW4- Shayed Seikh, PW5-Najmul Seikh, PW6- Jakir Hussain, PW7- Mahboob Alam and

PW8- Dr. Amit Naresh Khalkho, PW9- Tej Narain Sharma and PW10- Ram Lakhan Pandey.

6. On behalf of the prosecution to prove the charge against the accused in documentary evidence adduced Exhibit-1 signature of Najmual Seikh on seizure list, Exhibit-2 Postmortem report, Exhibit-3 Formal FIR, Exhibit-4 *Fardbeyan*, Exhibit-5 Endorsement on *fardbeyan*, Exhibit-6 Seizure list and Exhibit-7 Confessional Statement.

7. The statement of the accused under Section 313 of the Cr.P.C. was recorded who denied the incriminating circumstances in evidence against him and stated himself to be innocent. On behalf of accused no evidence was adduced.

8. The learned trial court after hearing the rival submissions of the parties passed the impugned judgment of conviction and sentence as stated herein above in opening para of this judgment.

9. The instant criminal appeal has been directed on behalf of the appellant Noor Islam aggrieved from the impugned judgment of conviction & sentence.

10. We have heard the learned counsel for the parties and perused the materials available on record.

11. In order to decide the legality and propriety of the impugned judgment of conviction and order of sentence passed by the learned trial court, we would like to re-appreciate the evidence on record, which is reproduced hereinbelow:

11.1 **PW1- Badruddin Sheikh**, in his examination-in-chief says the occurrence is of last year, it was 10:30 or 11:00 O'Clock. He was in his

house. His niece Jasmira Khatoon came to his house and told that her father had stabbed her mother. He and his father both went there and found his sister dead. Noor Islam was also sitting there armed with the knife. The blood was oozing from the stomach of his sister. The villagers have already nabbed Noor Islam. The police came and police interrogated him. He was taken to Badharwa Police Station and postmortem of dead body was conducted. The accused had been torturing his sister for last 6 or 7 years continuously and used to insist for his second marriage. 5-to-6-time panchayat was held. Despite having given assurance by the accused, he continued to torture his sister.

In cross-examination this witness says deceased was his sister. **He has not seen Noor Islam stabbing his sister. Jasmira Khatoon has told him. The occurrence did not take place in his presence. The police has recorded his statement.**

11.2 **PW2- Jasmira Khatoon** in her examination-in-chief says the occurrence is of last year on the occasion of *Bakrid*. She was in *bari* alongwith her two brothers and mother. **Her father came and began to hurl abuse to her mother and he stated that he would kill his mother and maternal uncle as well. His father asked her to keep mum and he stabbed the knife to her mother. She went to the house of her maternal grandmother and brought her from there alongwith her. Her mother died. It was his father who had stabbed knife in her stomach. She identified the accused to be her father in the dock.**

In cross-examination this witness says **at the time of occurrence her younger brother, three months old was in the lap of her**

mother and there is a only one house to sleep therein alongwith *Verandah*. They all sleep on the *Chowki* in *Verandah*. The *Chowki* in the *Verandah* is big one on which four to five persons may sleep. Her mother on the day of occurrence had slept on the ground. In cross-examination by the court this witness says **she was sleeping after hearing the sound of her mother, she went to inform maternal grandfather and maternal grandmother. When they came to the house his mother had died.** It is wrong to say that the persons of the village have falsely implicated her father in this case. **This witness suo moto says that her father killed her mother.**

11.3 **PW3- Tanjila Khatoon** in her examination-in-chief says her daughter Farida Khatoon was married 10 years ago with Noor Islam. Her son-in-law used to do *marpit* with her daughter. Panchayati was also held but no change came in him. **One year ago, her *natni* came to her and told that her father had stabbed the knife to her mother. She reached there and found the daughter dead. Her son-in-law was also sitting there alongwith knife.**

In cross-examination this witness says Noor Islam has only one house including one *Verandah* therein. **When she reached there found the clothes and the *blouse* of her blood drenched. She came to know in regard to stabbing knife from Jasmira Khatoon.** The injury was on the chest of her daughter. Noor Islam was also sitting on the right side of her daughter. **The knife was *sawabita* in length.** She does not know whether any one has snatched knife from him.

11.4 **PW4- Sayed Seikh** in his examination-in-chief says the occurrence is of 17 months ago it was a day of '*Kurbani*'. At about 11-12 O'clock of night he was sleeping in his house. **His *natni* Jasmira Khatoon came to his house and told that her father had killed her mother. He, his son and wife Tanjila Khatoon reached there and saw that her daughter was given stabbed wound in the stomach with the knife by Noor Islam. His son-in-law wanted to remarry with another lady. Panchayati was also held. Police took his *fardebayan*. He put the thumb impression thereon which he identified. Noor Islam present in the dock.**

In cross-examination this witness says **he has not seen the occurrence from his own eye rather his '*Natni*' told him in regard to the occurrence.** How much inch the knife was he does not know. The knife was also there in the hand of accused. It is wrong to say that he has falsely implicated his son-in-law.

11.5 **PW5- Naimul Seikh** in his examination-in-chief says the occurrence is of 17 months ago. It was 10-11 O'clock in the night, he was at his house. **Hearing the alarm, he awoke and saw that the persons of the village were running towards the house of Noor Islam. He also reached there and found the dead body of Farida Khatoon. There was stab wound in her stomach. The daughter of Noor Islam namely Jasmira Khatoon told that her father had killed her mother. Noor Islam was held by the villagers and ultimately was handed over to police. The seizure memo was prepared in his presence. He put his signature thereon marked as Exhibit-1. The knife which was seized was blood stained. The knife was recovered from the bed of Noor Islam who told to police that**

**the knife with which he committed murder was placed by him under the 'Bichawan'.**

In cross-examination this witness says he did not see any one committing murder of Farida Khatoon. **When he reached there, he found the villagers having caught hold of Noor Islam. The knife was recovered in his presence it was about eight inch.** The whole knife was of 'Iron'. The handle of the same was of wood. **This knife was of eight inch alongwith wooden handle.** The knife was recovered by police. He also put his signature.

11.6 **PW6- Jakir Hussain** in his examination-in-chief says the occurrence was of 20 months ago. It was 10-11 O'clock. He was sleeping at his house. **Hearing the alarm he was awoken by his wife. He went to the house of Noor Islam where his wife was lying dead. Jasmira Khatoon the Daughter of Noor Islam told that her father had killed her mother. There was stab wound in her stomach.**

In cross-examination this witness says the daughter of Noor Islam told that her father had killed her mother.

11.7 **PW7- Mahboob Alam** in his examination-in-chief says that the occurrence was of 20 months ago. It was the day of 'Bakrid'. The husband of Noor Islam used to torture her. *Panchayat* was also held. Many times, Noor Islam was made to understand. **On the day of occurrence hearing the alarm he also reached to the house of Noor Islam and came to know that he had stabbed his wife with knife.**

In cross-examination this witness says he did not see the commission of the murder when he reached to house of Noor Islam. Several persons were present there.

11.8 **PW8- Doctor Amrit Naresh Khalkho** in his examination-in-chief says that on 28.10.2012, he was posted at Sub-divisional Hospital at Rajmahal as Deputy Superintendent. At 12:35 PM he conducted the postmortem of dead body of Farida Khatoon, 30 years old and found the following external injuries:

External Injuries:

**Sharp penetration wound on epigastric region with tinted blood.**

**In his opinion cause of death is cardio respiratory failure due to excessive internal bleeding caused by penetrating wound on the stomach and incised wound on the liver because of rupture of spleen.**

The postmortem report in his pen and signature marked as **Exhibit-2.**

In cross-examination this witness says he found external injury of Sharp penetration over epigastric region. He has not mentioned the size of the wound. External injury was not in round shape. **External injury and internal injury were caused by the hard sharp substance.**

11.9 **PW9- Tej Narayan Sharma** in his examination-in-chief says on 28.10.2012 he was Station Officer of Barharwa Police Station. He had taken over the investigation of Barharwa P.S. Case No. 153 of 2012 under section 302 of IPC. Formal FIR is in writing of Sadanand Singh. He identified his writing and signature marked as Exhibit-3. He recorded the



*fardebayan* of Shayed Seikh which is in his pen and signature marked as Exhibit-4. Shayed Seikh had put his thumb impression thereon. The endorsement on the *fardebayan* is Exhibit-5. The seizure memo is in his handwriting and signature marked as Exhibit-6. He recorded restatement of informant. He inspected the place of occurrence. The house of Noor Islam was of mud tiled based comprising therein one room and *Verandah*. He recorded statement of the witness Jasmira Khatoon, Badruddin Seikh, Tanjila, Mahboob Alam, Jakir Hussain and Naimul Seikh. He prepared the inquest report of Farida Khatoon and postmortem was got conducted. **On confessional statement of Noor Islam knife was recovered which is Exhibit-6. His confessional statement is marked Exhibit-7** and after concluding investigation he filed charge-sheet.

In cross-examination this witness says after observing all the rules of search he recovered the knife used in the murder which was given by accused.

11.10 **PW10- Ram Lakhan Pandey** in his examination-in-chief says by the order of Station officer of police station Barharwa in P.S. Case No. 153 of 2012 dated 28.10.2012 the **seized knife is produced by him in the court which is marked material Exhibit-M**. This is the country made knife there is no seal of any company thereon.

12. **Prosecution case is based on direct evidence. The eye witness of the occurrence is the daughter of deceased and the appellant himself.** So far as the testimony of rest of the prosecution witness are concerned in regard to the occurrence. All of them came to know in regard

to the occurrence from Jasmira Khatoon and they found there the accused who has been held by the villagers at the place of occurrence.

13. The learned counsel for the appellant has vehemently contended that the star witness of the occurrence is Jasmira Khatoon who is *Natni* of informant and daughter of deceased and appellant. On the date of occurrence, this witness Jasmira Khatoon was eight years old and the trial court before recording her testimony has not verified in regard to competency of this witness, whether this 8 years old witness was competent to testify or not? Since other prosecution witness had come to know in regard to the occurrence from this witness PW2- Jasmira Khatoon. As such the whole of the prosecution case is demolished on the very ground.

14. Per contra the learned PP on behalf of the State vehemently opposed this contention and contended that obviously the trial court has not verified the competency of this witness to testify prior to recording her testimony; but from the testimony of this witness, it is well proved that this witness is having ample rationality to reply the questions asked to her. Therefore, her testimony cannot be tainted on the sole ground and is to be read as a whole.

15. Herein it would be relevant to reproduce the provisions of **Section 118 of the Indian Evidence Act, 1872**. **Section 118** of the Indian Evidence Act reads as under:

*“All persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them or from giving the rational answers to those questions by*

*tender years, extreme old age, disease, whether of body or mind or any other cause of the same kind. Explanation: A lunatic is not incompetent to testify unless he is prevented by his lunacy from understanding the question put to him and giving rational answer to them.”*

15.1 The witness PW2- Jasmira Khatoon who was 8 years old on the date of occurrence and was 11 years old on the date of examination before the court in trial. From the testimony of this witness, it is found that the trial court before recording her testimony has not verified this witness in regard to the competency, whether this witness is competent to testify and is able to give the rational answer of the questions asked to her on account of her tender age?

15.2 Herein it would be relevant to appraise the testimony of this witness PW2- Jasmira Khatoon in a whole. Whether her testimony inspires the confidence of the Court to rely upon in regard to the questions which have been asked to her in a lengthy cross-examination of six pages and also her statement given in her examination-in-chief ?

15.3 PW2- Jasmira Khatoon in her examination-in-chief has stated that **the occurrence was of the day of 'Bakrid' of last year. Her father came from the outside and began to hurl abuse to her and her mother and told that he would kill her mother and maternal uncle as well. Her father asked her to keep mum and her father inflicted gave stab wound to her mother. She rushed to her maternal grandmother to call her and immediately, came back alongwith her maternal grandmother still found her father armed with knife. Her mother had died. Her father**

**had given a knife blow in the stomach of her mother.** This witness in cross-examination has categorically stated that at the time of occurrence her younger brother three months old was in lap of her mother. There is only one house to sleep therein alongwith '*Verandah*'. They all sleep on the *Chowki* in '*Verandah*'. The *Chowki* in the '*Verandah*' is big one on which four to five persons may sleep. On the day of occurrence her mother had slept on the ground. Further in cross-examination by the court, this witness has stated when she was sleeping, after hearing the sound of her mother she went to inform her maternal grandfather and maternal grandmother. When they came to the house her mother had died. **This witness had suo moto stated that her father killed her mother.**

15.4 **Although the learned trial court has not put any question to this witness PW2- Jasmira Khatoon to verify her suitability as a witness, yet the statement of PW2- Jasmira Khatoon which was given in her examination-in-chief was not shaken in the cross-examination and whatever the questions were put up this witness, the reply given by this witness is found to be rational which shows her rationality to understand the question and to reply the same.**

15.5 The Hon'ble Apex Court in "*Nivrutti Pandurang Kokate & Ors. v. State of Maharashtra*" (2008) 12 SCC 565 held:

*"10. "6. ... The Evidence Act, 1872 (in short 'the Evidence Act') does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the court considers that they are prevented from*

*understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease—whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto. This position was concisely stated by Brewer, J. in Wheeler v. United States. The evidence of a child witness is not required to be rejected per se, but the court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon. (See Suryanarayana v. State of Karnataka.)*

**7. In *Dattu Ramrao Sakhare v. State of Maharashtra* it was held as follows : (SCC p. 343, para 5)**

*'5. ... A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and*

*his/her demeanour must be like any other competent witness and there is no likelihood of being tutored.'*

*The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness."*

15.6 The Hon'ble Apex Court in "***Himmat Sukhadeo Wahurwagh & Ors. v. State of Maharashtra***" (2009) 6 SCC 712 held:

*"30. It has been submitted by the learned counsel for the appellants that Sanjay was a mere child of 11 years of age and in running away and hiding himself in the house of Abgad particularly after his father had been brutally murdered, was an*

*unacceptable story. We find no merit in this plea. On a perusal of Sanjay's evidence, it stands revealed that he was able to discern between right and wrong and despite a searching cross-examination made by the defence lawyer nothing adverse could be brought out.*

*34. It is, therefore, obvious that the accused had let loose a reign of terror and after having killed three persons were still not satisfied and were looking around for other victims from the Kolhe family. Little wonder, therefore, that Sanjay had thought it fit and prudent to hide himself till the coast was clear. **It is true that the Additional Sessions Judge did not put any questions to Sanjay to ascertain his suitability as a witness. We, however, find from the evidence that he fully understood the implications of what he was saying and despite a stiff cross-examination nothing to discredit him could be brought out.***

16. So far as the testimony of PW1- Badruddin Sheikh, PW3- Tanjila Khatoon, PW4- Sayed Seikh, PW6- Jakir Hussain are concerned. All these witnesses have stated that **they have come to know in regard to the occurrence from PW2- Jasmira Khatoon who had told her father had given a knife blow to her mother in her stomach.**

16.1 **PW3- Tanjila Khatoon is the maternal grandmother of Jasmira Khatoon and mother of deceased.** She after having come to know in regard to occurrence from her *Natni* reached to the place of occurrence she found the clothes and *blouse* of her daughter blood drenched.

16.2 **PW4- Sayed Seikh is the maternal grandfather of Jasmira Khatoon**, he has also stated that his *Natni* Jasmira Khatoon came his house and told that her father had killed the mother. He alongwith his wife Tanjila Khatoon and son reached there and found that the daughter in injured condition having stab wound in her stomach.

16.3 **PW6- Jakir Hussain is the neighbour**. He has stated that when he heard the alarm, he reached to the house of Noor Islam found his wife lying dead. **Jasmira Khatoon daughter of Noor Islam told him that her father had killed the mother. There was stab wound in her stomach.**

16.4 **PW1- Badruddin Sheikh is the brother of deceased**. He has also stated that his niece Jasmira Khatoon came to the house and told that her father had stabbed her mother. He alongwith his father reached there and found his sister dead. Noor Islam was also sitting there armed with the knife. The blood was also oozing from her stomach. **The villagers had already nabbed Noor Islam.**

17. Therefore, **the testimony of all these witnesses also becomes admissible in evidence because all these witnesses came to know in regard to the occurrence from the eye witness PW2- Jasmira Khatoon who had seen the occurrence from her own eye.**

18. The testimony of this PW-2 eye witness Jasmira Khatoon is also corroborated with medical evidence. **PW8- Doctor Amrit Naresh Khalkho** has deposed that while conducting the postmortem of deceased Farida Khatoon on 28.10.2012 **he found a sharp penetration wound on the epigastric region with tinted blood.** He opined the **cause of death cardio-respiratory failure due to excessive internal bleeding caused by**



**penetrating wound on the stomach and incised wound on the liver because of rupture of spleen. He has proved the postmortem report as Exhibit-2.**

19. The investigating officer of this case was examined as **PW9- Tej Narayan Sharma**. He has stated that the house of Noor Islam was of mud tiled based comprising therein one room and *Verandah*. He has recorded the statement of Jasmira Khatoon, Badruddin Seikh, Tanjila, Mahboob Alam, Jakir Hussain and Aimul Seikh. He also prepared the inquest report of Farida Khatoon and postmortem report was got conducted. He says that on confessional statement of Noor Islam, the knife was recovered.

19.1 The seizure memo of the knife has been proved by the witness **PW5- Naimul Seikh**. This witness says that the daughter of Noor Islam namely Jasmira Khatoon told that her father had killed her mother. Noor Islam was held by the villagers and ultimately was handed over to police. **The seizure memo was prepared in his presence, he had put his signature there marked Exhibit-1. The knife which was seized was blood stained. This knife was recovered from the bed of Noor Islam who told the police that the knife with which he had committed murder was placed by him under the 'Bichawan'**. He has stated that when he reached to the place of occurrence he found the villagers having caught hold of Noor Islam. **This knife was recovered in his presence. It was about eight inch. The whole knife was of iron including the wooden handle of the same.** He has identified his signature on the seizure memo.

19.2 PW9- Tej Narayan Sharma the investigating officer in para-10 of his statement has stated that during investigation accused Noor Islam was arrested by him. He told that the knife used in murder of Farida Khatoon to be under the '*Bichawan*' and same was recovered on his pointing out beneath the '*Bichawan*' from the house of Noor Islam.

19.3 PW10- Ram Lakhan Pandey has produced the knife in court marked as Material Exhibit 'M'.

19.4 Therefore, there is evidence under section 27 of the Evidence Act against the appellant convict since on his confessional statement and pointing out the blood stained knife was recovered by the investigating officer under the '*Bichawan*'. The recovery memo of the same Exhibit-1 has been proved by the independent witness PW5- Naimul Seikh. Though, this knife was not sent to FSL for examination yet the same is not found fatal to the prosecution case reason being the prosecution case is based on direct evidence.

20. So far as the statement of the appellant convict Noor Islam under section 313 of Cr.PC is concerned from the perusal of the question asked to him and the answer given by the appellant convict it is found that all the incriminating circumstances in evidence against him has been put to him.

21. In view of the above analysis of the evidence on record, we are of the considered view that the impugned judgment of conviction and order of sentence passed by the learned trial court is based on proper appreciation of the evidence and needs no interference. Accordingly, this criminal appeal deserves to be dismissed.

22. This criminal appeal is, hereby, **dismissed**. The impugned judgment of conviction and order of sentence passed by the court below is, hereby, **affirmed**.

23. The appellant is in jail, he is also directed to serve out the rest of the sentence as awarded by the learned trial court.

24. Let the record of learned trial court be sent back alongwith copy of judgment for necessary compliance.

**(Subhash Chand, J.)**

Per Ananda Sen, J. : I agree

**(Ananda Sen, J.)**

*High Court of Jharkhand, Ranchi*

*Dated: 22 / 07/2024*

*RKM*

*AFR*