

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45844 of 2014

Arising Out of PS.Case No. -313 Year- 2008 Thana -TELMAR District- NALANDA
(BIHARSHARIFF)

=====

Mithilesh Kumar @ Mithilesh Singh Son of Sri Ram Swaroop Singh
Resident of village- Naya Khandha, P.S.- Telmar (Harnaut), P.O.- Telmar,
District- Nalanda

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

=====

Appearance :

For the Petitioner : Mr. Rajendra Narain, Sr. Advocate

For the Opposite Party : Mr. Narsing Tanti(App)

For the Informant : Mr. Nityanand Tiwari, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

3 19-05-2015

Heard the parties.

Sole petitioner seeks anticipatory bail in connection with Telmar P.S. case no. 313 of 2008 instituted under diverse Sections of the Indian Penal Code including Section 302 of the IPC.

According to the First Information Report, a dispute between the parties had arisen over cutting of ridge in the field. The petitioner is said to have assaulted the son of the informant with 'lathi' followed by omnibus allegation of assault by other accused persons on him. The son of the informant after receiving the injury dropped dead in the field itself. The informant and his another son also received injuries. The petitioner, in such

circumstance, moved this Court for anticipatory bail which was considered and rejected by order dated 25.8.2009. This is repeat application seeking anticipatory bail.

Mr. Narain has explained the circumstance under which this application has been filed. It is stated that after submission of charge- sheet cognizance was taken against the petitioner on 13.4.2009. The said order was assailed before this Court and by order dated 21.9.2010, this Court directed for fresh investigation. In the light of the said order further investigation was carried out under Section 173(8) of the Cr.P.C. whereafter the final reported dated 21.2.2011 (Annexure-2) was submitted wherein the plea of alibi was found correct and the petitioner was not sent up. The cognizance, in the meanwhile, was taken against the petitioner. In such circumstance, the petitioner filed another proceeding before this Court challenging the legality of the order passed by the learned Judicial Magistrate . This Court by order dated 28.2.2013 (Annexure-3) quashed the order taking cognizance against the petitioner and remitted the matter back to the learned court below for passing a fresh order. The learned Magistrate, in the light of the order of this Court, passed a fresh order on 3.9.2014 (Annexure-4) whereby differing with the final report cognizance has been taken.

It has been submitted that the alibi of the petitioner has been investigated and found correct, and as such, the petitioner deserves privilege of anticipatory bail.

Learned counsel(s) for the informant and the State have opposed the prayer. They have placed order by which cognizance was taken vide order dated 3.9.2014 wherein all relevant material against the petitioner has been discussed. The plea of alibi is a matter which can be raised and proved by reliable evidence at the trial and not at the present stage. That apart the learned Magistrate has assigned reasons for differing therewith.

Considering the allegations attributed to him and the materials on record against the petitioner, in my view, he does not deserve privilege of anticipatory bail.

Prayer is rejected.

(Kishore Kumar Mandal, J)

Shyam/-

U		T	
---	--	---	--