

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45408 of 2015

Arising Out of PS.Case No. -224 Year- 2011 Thana -MASRAKH District- SARAN

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1. Kedar Nath Singh @ Kedar Singh Son of Late Basudeo Singh, resident of village- Masrakh, Police Station- Masrakh, District- Saran at Chapra.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashhar Mustafa

For the Opposite Party/s : Mr. Durgesh Nandan(App)

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL ORDER

6 09-11-2015 Heard learned counsel for the petitioner, learned Additional Public Prosecutor for the State and learned counsel, appearing for the informant.

Petitioner is in jail custody since 26-08-2015 in a case registered under Sections-147, 148, 149, 341, 323, 324, 353, 307, 379, 302 of the Indian Penal Code and 27 of the Arms Act.

According to prosecution case, a meeting was going on in the premises of Masrakh Block Office and in the aforesaid meeting; wife of informant, including the petitioner and other persons were present. The informant along with some others was standing outside the meeting hall and in the meantime, one Mr. Thakur went near the door of



meeting hall where petitioner along with his private and government security guards started assaulting the said Mr. Thakur as a result whereof, informant's wife and her supporters boycotted the said meeting. The petitioner along with his private and security guards left the place of meeting but again, he along with several persons came there and thereafter, on the order of FIR named accused, Dinanath Singh gave order and shot fire of his rifle upon the informant with a view to kill him but deceased Munna Singh came between them as a result thereof, he sustained fire-arm injury on his hand and, thereafter, petitioner and FIR named accused, Sudhir Singh made firing on the deceased and left the place of occurrence. The deceased having sustained fire-arm injury, fell down there.

Learned counsel, appearing for petitioner submits that according to prosecution case itself, the alleged occurrence took place at 2.45 p.m. and admittedly, the first information report was lodged at 7.00 p.m. It is further submitted by him that according to prosecution case, the officer-in-charge of Masrakh Police Station was present at the time of alleged occurrence and witnessed the entire occurrence. It is further contended by him that on 17-12-



2011 at 7.00 p.m. the officer-in-charge of Masrakh Police Station gave information to Masrakh police station about the alleged occurrence but he did not mention the name of assailant and it was disclosed by him that the injured Munna Singh was being taken to Sadar Hospital, Chapra and a Sanha Entry to that effect was made. Again, Sanha Entry No. 466 was made to this effect that when the injured Munna Singh was brought to Sadar Hospital, Chapra, he was declared brought dead by the concerned doctor. Learned counsel for the petitioner drew my attention towards Sanha Entry No. 468, which was entered at 6.30 p.m. and pointed out that the District Magistrate, Saran, the Superintendent of Police, Saran, Dy. S.P. Saran reached the place of occurrence and seized the blood stained soil and mis-fired cartridges. Learned counsel for the petitioner submits that the aforesaid Sanha Entries go to show that information regarding the alleged occurrence had already been received by the police before giving of written report of informant and therefore, the written report of the informant cannot be treated as first information report.

It is further contended by him that one, Lalita Devi filed complaint case bearing Complaint Case No. 3565 of



2011 and on the basis of aforesaid complaint case, Masrakh P.S. Case No. 15 of 2012 was registered and in the aforesaid case, Lalita Devi and several others claimed that it was Maheshwar Singh, who happens to be witness of the present case, made indiscriminate firing of rifle as a result whereof, deceased sustained injury. It is further contended by him that in course of investigation, the statement of several witnesses were recorded u/S 161 as well as 164 of the Cr.P.C. and some witnesses supported the case of informant of the present case whereas; several other witnesses supported the case of Lalita Devi. It is further contended by him that the I.G. Muzaffarpur range also supervised the case and noticed in his supervision note that in course of his supervision, it was found that several witnesses supported this fact that petitioner was not present on the place of occurrence and it was Maheshwar Singh who opened fire on the deceased but he directed for submission of charge sheet against petitioner and others only on the basis that informant and his witnesses supported the story of informant and, therefore, in view of above-stated two versions, it is needless to keep the petitioner behind the bar.



On the other hand, learned counsel, appearing for informant, vehemently, opposed the prayer for bail submitting that there is specific allegation against petitioner that he opened fire on the deceased and the presence of the petitioner on the place of occurrence was admitted by the witnesses, who were examined in Masrakh P.S. Case No. 15 of 2012. It is further contended by him that the informant as well as his witnesses claimed to have seen the present occurrence and postmortem report of the deceased also corroborates the above-said fact. It is further contended by him that I.G. Muzaffarpur range supervised both the cases and found Masrakh P.S. Case No. 15 of 2012 palpably false and, therefore; petitioner does not deserve to get the privilege of bail.

It is admitted position that officer-in-charge of Masrakh Police Station was present on the place of occurrence when the occurrence took place. The statement of officer-in-charge of Masrakh Police Station was recorded by investigating officer in course of investigation, which is evident from perusal of paragraph-78 of the case diary. The aforesaid witness, specifically, stated that a quarrel took place between the parties and in that quarrel, hot exchange



of words took place between the petitioner and Maheshwar Singh but he intervened and dispersed both the parties from there. This witness, specifically, stated that petitioner left the place but after 15-20 minutes of the aforesaid quarrel, 15-20 persons along with FIR named accused, Dinanath Singh having armed with fire arms came there and started assaulting Maheshwar Singh. This witness further stated that three round firing was made and the deceased Munna Singh sustained fire-arm injury and after that, the above-said persons fled away from there. This witness further stated that in the meantime, the other officials of the police station came there and the deceased was taken to hospital, where he was declared brought dead. The I.O. noted in the aforesaid paragraph that the Superintendent of Police, Saran specifically, asked the name of assailants and then this witness replied that the persons, who had come along with FIR named accused Dinanath Singh, committed the murder. This witness has, nowhere, stated that the petitioner had also come along with co-accused Dinanath Singh.

Admittedly, there was long standing previous enmity between the petitioner and informant and one, Lalita Devi lodged Masrakh P.S. Case No. 15 of 2012 accusing

finger against witness, Maheshwar Singh.

According to prosecution case, co-accused Dinanath Singh opened fire causing fire-arm injury on the hand of deceased and, thereafter, petitioner and co-accused, Sudhir Singh opened fire but it is not specific as to on which part of the body of the deceased, the firing of the petitioner hit. The postmortem report of deceased reveals that only two fire-arm injuries were found on the person of the deceased. One fire-arm injury was found on the hand of the deceased whereas; another fire-arm injury was found on abdomen but it is not specific, who caused injury on abdomen of the deceased.

Admittedly, there are two sets of witnesses, who are divulging different stories but the independent witness, the then officer-in-charge of Masrakh Police Station, who had no grudge against any of the parties, did not disclose the name of the petitioner as assailant nor did he state about presence of the petitioner at the time of alleged occurrence. The investigation of this case has already been completed and therefore, in my view, the petitioner is entitled to get the privilege of bail.

Accordingly, the petitioner named above is

directed to be released on bail on furnishing bail bonds of Rs. 10,000/- (ten thousand) with two sureties of the like amount each in connection with Masrakh P.S. Case No. 224 of 2011 corresponding to Sessions Trial No. 78 of 2015 to the satisfaction of learned Additional District & Sessions Judge-IV, Saran at Chapra subject to condition that the petitioner shall appear before the trial court on each and every date, in person, for a period of nine months or till conclusion of his trial, whichever is earlier and if, he fails to do so, on three consecutive dates without any reasonable cause, the learned trial court shall be at liberty to cancel the bail bonds of the petitioner after due and proper inquiry.

(Hemant Kumar Srivastava, J)

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