

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.7499 of 2015**

Arising Out of PS.Case No. -112 Year- 2011 Thana -MANJHI District- SARAN

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1. Pushkar Kumar @ Appu Singh, S/o Late Prabhunath Singh @ Amarnath Singh,  
R/o village- Narwan, P.S. Manjhi, Dist. Saran, A/P Road No. 15 E, Rajeev  
Nagar, P.S. Rajeev Nagar, Dist. Patna.

.... .... Petitioner/s

Versus

1. The State of Bihar

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Shyam Kumar Singh, Advocate

For the Opposite Party/s : Mr. Indra Kumar Singh, APP

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**CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH**

**ORAL JUDGMENT**

**Date: 16-07-2015**

1. The Petitioner seeks quashing of the order dated 05.01.2015 by which the Additional Sessions Judge, 5<sup>th</sup>, Saran at Chapra, has refused to discharge the Petitioner in Sessions Trial No.384 of 2012 arising out of Manjhi P.S. Case No.112 of 2011.

2. The case of the Informant is that on the date of occurrence at about 7.00 PM she along with her deceased husband was going to charge her mobile phone to the house of a co-villager, Surendra Singh. When the Informant reached near the house of Manindar Singh, she noticed that all the accused persons were there from before. On the direction of accused Deonath Singh & Jitendra Singh, accused Sudhir Singh and Anuj Singh tried to surround the Informant and her husband. When the Informant tried to flee away, accused Appu Singh (Petitioner) and Abilash Singh fired upon the deceased husband of the Informant on the chest. When the villagers

assembled, they fled away. Thereafter, the deceased was taken to the hospital but he succumbed to the injuries.

3. It has been submitted on behalf of the Petitioner that even though there was an allegation against the Petitioner directly of causing death of the deceased but subsequently when he took the plea of *alibi*, it was verified thoroughly by the Investigating Agency which found true on the basis of unimpeachable materials such as CCTV footage at Varanasi. The prosecution also has brought such material on record before the Trial Court which noticed it but refused to discharge him.

4. In support of his case, the Petitioner relies on the decision in the case of **Rajiv Thaper & Ors. Vs. Madanlal Kapoor [2013(3) SCC 330]** and **Prashant Bharti Vs. State {NCT of Delhi} [2013 (9) SCC 293]** but I am unable to appreciate how they are applicable to the facts of the present case.

5. One of the fundamentals of criminal law is that justice is not to be meted out by the prosecution but by a Court of law. Hence, once the Trial Court itself was satisfied that there was enough material both direct and corroborative in the Case Diary to put the Petitioner on trial, I find no reason to disagree.

6. Also Section 101 of the Evidence Act states the following:

**101. Burden of proof:**

Whoever desires any Court to give

judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

7. In the present case, when I see the Petitioner pleads *alibi*, which is a question of rebuttable fact, the burden is evidently on him to prove it during trial. It cannot be considered at a pretrial stage to his advantage without giving the prosecution an opportunity to test it in trial.

8. Hence, the application is **dismissed** with a direction to the Court below to ensure that the trial is concluded expeditiously without granting unnecessary adjournment to any party for which reason the Trial Court shall send a list of the witnesses fixing specific dates for their examination along with a copy of this order to the concerned Superintendent of Police, who is directed to ensure the attendance of the witnesses on the date fixed so that there is no further delay in the trial.

(Anjana Prakash, J)

JA/-

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