

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.19109 of 2016

Arising Out of PS.Case No. -806 Year- 2015 Thana -KANKARBAGH District- PATNA

1. Sri Tarkeshwar Rai @ Tarkeshwar Rai Son of Late Ram Pujan Rai,
 Resident of Mohalla - Azad Path, Gali No. 05, P.S. - Kankarbagh, District -
 Patna.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Kiran Sinha

For the Opposite Party/s Mr. Rajendra Pd. Nat(App)

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER

02/ 05.05.2016

Heard learned counsel for the petitioner as well as learned

Addl. Public Prosecutor for the State assisted by learned counsel for
 the informant.

Petitioner is in jail custody since 4.3.2016 in a case
 registered under sections 302, 120B/34 of the Indian Penal Code.

The informant claims that he saw the petitioner and five
 other accused persons running from the place of occurrence and when
 he came running on the place of occurrence, he found his brother
 lying on the road in a pool of blood. Informant's brother was taken to
 hospital where he died in course of his treatment and after that present
 case was lodged. Photostat copy of the post mortem report has been
 annexed as annexure 3 to this petition. The aforesaid post mortem
 report goes to show that deceased sustained one firearm injury.

Learned counsel for the petitioner submits that having more



or less similar allegation two co-accused, namely, Ramesh Rai and Chandeshwar Rai have already been granted privilege of anticipatory bail by a coordinate bench of this court vide order dated 29.2.2016 passed in Cr. Misc. no. 8795/2016. It is also pointed out by him that the petitioner was also one of the petitioners in the aforesaid Cr. Misc. no. 8795/2016 but his prayer for anticipatory bail was rejected because correct criminal antecedent of the petitioner could not be brought on record and moreover, the aforesaid bench directed the petitioner to surrender before the court below and seek regular bail. It is submitted that in compliance of the aforesaid order, petitioner surrendered before the court below and sought regular bail but his prayer for regular bail was rejected.

On the other hand, learned counsel appearing for the informant as well as learned Addl. Public Prosecutor vehemently oppose the prayer submitting that the petitioner had also entered into the conspiracy of committing the murder of the deceased.

Learned counsel for the informant referred para 52 of the case diary and submitted that one witness, who happens to be son of the deceased, claims that the petitioner and other accused assaulted him with brick and also made firing on the deceased and, therefore, the petitioner does not deserve privilege of bail.

Although case diary is not available before this court but relying on the submission of learned counsel appearing for the informant, even if it assumed that the petitioner and other accused made firings on the deceased, then also, only one firing is said to have been received by the deceased and moreover, having similar allegation

co–accused, namely, Ramesh Rai and Chandeshwar Rai have already been granted privilege of anticipatory bail and, therefore, in my view, with an intent to maintain parity of justice, petitioner deserves to be released on bail.

Accordingly, petitioner is directed to be released on bail on furnishing bail bonds of Rs 10,000/- with two sureties of the like amount each to the satisfaction of Miss. Smita Raj, Judicial Magistrate, Ist Class, Patna in Kankarbagh P.S. Case no. 806/2015.

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(Hemant Kumar Srivastava,J)

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