

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Miscellaneous No.53731 of 2015**

Arising Out of PS.Case No. -368 Year- 2015 Thana -GOPALGANJ CITY District- GOPALGANJ

1. Shakti Singh Son of Raj Kishore Singh resident of village - Bhojpurwa,
P.S. Manjha Garh District - Gopalganj

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

with

Criminal Miscellaneous No.50026 of 2015

Arising Out of PS.Case No. -368 Year- 2015 Thana -GOPALGANJ CITY District- GOPALGANJ

1. Jitendra Singh @ Jitendra Prasad Singh Son of Harishankar Prasad Singh,
Resident of Village -Hajiapur, P.S. - Gopalganj, District - Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

Appearance :

(In Cr.Misc. No.53731 of 2015)

For the Petitioner/s : Mr. Binay Kumar Singh -Advocate

For the Opposite Party/s : Mr. Shakir Ahmad(APP)

(In Cr.Misc. No.50026 of 2015)

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate

Mr. Dharmesh Kumar -Advocate

For the Opposite Party/s : Mr. Renuka Ratnakar (APP)

For the informant: Mr. Binay Kumar Singh, Advocate.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL ORDER**

4 16-02-2016 Cr.Misc.No. 53731/2015 wherein Shakti Singh happens
to be the petitioner and Cr.Misc.No. 50026/2015 wherein Jitendra
Singh @ Jitendra Prasad Singh is the petitioner commonly
originate out of Gopalganj (Town) PS Case No. 368/2015, on
account thereof, both the petitions have been heard together and
are being disposed of by a common order.

2. At an earlier occasion while learned counsel
representing the petitioner, Jitendra Singh @ Jitendra Prasad



Singh was on his leg, an objection has been made on behalf of learned counsel representing the son of deceased/informant that the certificate so made under para-3 of the petition happens to be wrong because of the case that petitioner also happens to be an accused in Complaint Case No. 288/2015 whereupon the supplementary affidavit has been filed on behalf of petitioner admitting the same as well as an explanation has also been furnished on behalf of deponent, son-in-law of petitioner that being outsider, he was not in a position to know about the same. Therefore, such mistake has been committed. At the present moment, learned counsel representing son of deceased/informant submitted that petitioner was well aware of the fact as he had preferred revision against the order of the cognizance.

3. Be that as it may, the deponent happens to be son-in-law of the petitioner, being resident of different district that of petitioner. On account thereof, the explanation so furnished is, hereby, accepted.

4. The deceased who was a practising advocate at Gopalganj, while at his residence on 30.08.2015, at about 2:45 p.m., 2 unknown persons posing themselves to be his clients required his presence whereupon, he came. Then thereafter, the aforesaid unknown persons threatened him that he has taken dispute with Golden Kumar. They further directed him to execute



sale-deed with regard to the land over which he has constructed a building. He had further seen Golden Kumar along with two unknown persons standing outside. On his refusal, one of them shot at the deceased, on account thereof, he became injured and fell down. Thereafter, Golden Kumar escaped therefrom along with two unknown persons on motorcycle and other two unknown persons also escaped over motorcycle.

5. On hearing the sound of firing, neighbours arrived, lifted him to the hospital where he was undergoing treatment. He had further stated that Jitendra Singh and his daughter, Ruby are instrumental.

6. It has been submitted on behalf of the petitioner that name of Jitendra Singh has been inserted subsequently in the Fard-e-beyan intentionally to malign him as well as to demoralize him by having his daughter, an accused in the instant case. Furthermore, it has been submitted that neither direct nor circumstantial evidence has yet been collected by the police to justify detention of the petitioner. It has also been submitted that during course of investigation the Investigating Officer had recorded statement of different persons including son of deceased under para-12 as well as Ravi Bhushan under para-13 whereunder also no allegation has been attributed to the petitioner rather allegation happens to be against his son, Golden Kumar @

Abhinav. In para-13 also, the same kind of allegation has been attributed to. Therefore, it has been submitted that petitioner's complicity is not at all duly substantiated.

7. On merit of the case, it has also been submitted that the deceased happens to be distantly related with the petitioner and in the aforesaid background, he was provided an accommodation to stay after his retirement on a monthly rental which, the deceased never paid and lastly, to get rid of, the petitioner, executed the sale deed for certain area in favour of informant whereupon, after constructing house, the deceased along with his family members were residing. In due course of time, the prosecution party developed ill eye over the remaining land lying by the side of his house, on account thereof, was protested and that happens to be reason behind false implication of the petitioner, so that prosecution party could achieve success in getting the land in their favour. Furthermore, it has also been submitted that petitioner happens to be under custody since 31.08.2015.

8. Learned counsel representing the petitioner, Shakti Singh has submitted that absolutely there happens to be no evidence against the petitioner. He is not named in the FIR. From para-41 of the case diary, his presence has been conceived by the Investigating Officer on his own and to justify the same, it has been incorporated that on the basis of technical evidence, his



complicity has been found. After apprehension of petitioner, so called inculpatory extra judicial confessional statement has been recorded under para-45 of the case diary wherefrom also, it is apparent that petitioner neither had accompanied other assailant to the place of occurrence nor was anyhow involved. It has also been submitted that video clippings of CCTV happen to be in custody of Investigating Officer wherefrom also petitioner's presence is negatived.

9. Furthermore, it has also been submitted that Investigating Officer had tried to connect the petitioner on the basis of conversation having taken place in between petitioner, Shakti Singh along with Thhathhu Mian and others which has been detailed under paragraphs 121 and 122 of the case diary, that is also not connecting the petitioner with the alleged crime. Furthermore, from the confessional statement made by the petitioner, it is apparent that some sort of disclosure has been made that petitioner along with other co-accused have gone to Motihari Jail where they met with Mantu Singh, a custodial accused but, the Investigating Officer did not care to go to Motihari Jail and traced out from the jail register whether on the relevant date, petitioner's presence was the Motihari Jail. Therefore, in absence of those documents, it could be said that any sort of circumstantial evidence does exist to justify further

detention of the petitioner.

10. On the other hand, learned APP assisted by learned counsel for the son of informant/deceased opposed the prayer for bail and submitted that investigation is at its nascent stage and on account thereof, petitioner should not be released on bail. Furthermore, it has also been submitted that whatever material has been collected or is to be collected, is the duty of Investigating Officer and any sort of deficiency on that very score will not axe upon the version of the prosecution.

11. It has further been submitted that from own submission made on behalf of petitioner, Jitendra Kumar @ Jitendra Prasad Singh, it is apparent that he has got some sort of grievances against the deceased on account of staying at his place without paying the rent and that happens to be a motive for commission of the occurrence. That being so, petitioner, Jitendra Kumar @ Jitendra Prasad Singh does not deserve bail.

12. In likewise manner, it has also been submitted that for the present, the inculpatory extra judicial confessional statement of petitioner, Shakti Singh is found duly substantiated by way of further investigation whereunder conversation amongst the co-accused is found duly established. Presence of co-accused is not necessary whenever there happens to be question of abetment. In the aforesaid background, petitioners, Shakti Singh

does not deserve bail.

13. Apart from having a glance over relevant paragraphs as referred above from para-128 of the case diary, it is evident that after concluding investigation, charge-sheet has already been submitted against the accused persons, Jitendra Singh @ Jitendra Prasad Singh and Shakti Singh and on account thereof, the material whatever available against the petitioners does not justify detention of these two petitioners.

14. Consequent thereupon, petitioners Shakti Singh and Jitendra Singh @ Jitendra Prasad Singh are directed to be released on bail on furnishing bail bond of Rs.10,000/- each with two sureties of the like amount each to the satisfaction of Chief Judicial Magistrate, Gopalganj in Gopalganj Town P.S. Case No. 368/2015.

(Aditya Kumar Trivedi, J)

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