

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.55932 of 2015

Arising Out of PS.Case No. -14 Year- 2014 Thana -MEHANDIA District- JEHANABAD

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Shekhar Kumar @ Ghantu, Son of Late Hari Shankar Singh, resident of
village- Bambhai, P.S. Karpi, District- Arwal.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nilesh Kumar

For the Opposite Party/s : Mr. Aditya Narayan Singh 1(App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 27-01-2016 Heard learned counsel, Mr. Ajay Thakur, appearing
on behalf of the petitioner, Shekhar Kumar @ Ghantu, who is in
custody in connection with Mehandia P.S. Case No. 14 of 2014
under Section 302/34 of the Indian Penal Code since 02.02.2015
and learned A.P.P. as well as Mr. N.K. Singh, learned counsel
appearing for the informant.

It is not necessary to go into details of the case as
earlier the prayer for bail of this petitioner has already been
rejected in Cr. Misc. No. 48335 of 2014, wherein the facts have
been dealt with in detail, which is annexure-1 to this application.

The learned counsel for the petitioner submitted that
the F.I.R. is against Santosh Kumar. The prayer for bail of this
petitioner was rejected by this Court on 10.04.2015 in Cr. Misc.



No. 11585 of 2015, which was heard along with Cr. Misc. No. 48335 of 2014 after consideration of the paragraph Nos. 290, 291 and 322 of the case diary. According to learned counsel, at that time, the petitioner had no copy of the case diary and further that he had no copy of the statement under Section 164 recorded by the Magistrate of two witnesses, namely, Dudhnath Sharma, Satyendra Kumar. In paragraph 290 and 291, the statement recorded under Section 164 Cr.P.C. has been copied by the I.O. in the aforesaid two paragraphs, therefore, the petitioner could not point that in their statements, none of these two witnesses have named him.

On the other hand, learned counsel, Mr. N.K. Singh appearing for informant and learned A.P.P. appearing on behalf of the State submitted that in paragraph 144 of the case diary and paragraph 322 of the case diary, the statement of witnesses have been recorded, which shows that there was enmity between both the parties and in their statement, these witnesses have named the present petitioner, therefore, this Court has rightly rejected the regular bail application of this petitioner in Cr. Misc. No. 11585 of 2015 on 10.04.2015. Learned counsel, Mr. N.K. Singh, further submitted that second time, the regular bail of the other accused

persons, namely, Santosh Kumar, has been rejected by this Court on 14.10.2015 in Cr. Misc. No. 48369 of 2015.

Perused the order passed by this Court on 10.04.2015 in Cr. Misc. No. 11585 of 2015. Perused the statement under Section 164 Cr.P.C., certified copy of which is produced at the time of hearing of this bail application. From perusal of the order rejecting the bail application earlier, it appears that mainly the prayer for bail of this petitioner was rejected after considering the statement of two witnesses recorded in paragraphs 290 and 291 under Section 164 Cr.P.C. which was copied by the I.O.

From perusal of the statements, I find that both of them have not named this petitioner, Shekhar Kumar @ Ghantu. The said two witnesses have named Santosh, Mantu, Dhirendra, Deenanath Sharma and Umesh having rifle and other deadly weapon in their hands just prior to the occurrence. So far paragraphs 144 and 322 of the case diary is concerned, both the witnesses, whose statements have been recorded under Section 164 Cr.P.C., are not the eye witnesses. They have only described the enmity between the Up-Mukhiya and the deceased. Now, therefore, if the statement of witnesses under Section 161 Cr.P.C. recorded in paragraphs 322 and 144 is read then it only shows that



there was enmity between Up-Mukhiya and the deceased person and the Up-Mukhiya was trying to kill the deceased with the help of the accused persons. Except this statement of these witnesses that this petitioner along with other co-accused persons conspired with Up-Mukhiya to kill the deceased, there is nothing against this petitioner, as stated above earlier this fact that this petitioner is not named by the two persons, whose statement under Section 164 Cr.P.C. copied in paragraphs 290 and 291 was not brought to the notice of this Court.

So far the rejection of regular bail of the other accused, Santosh Kumar, second time on 14.10.2015 in Cr. Misc. No. 48369 of 2015 is concerned, it may be stated here that Santosh Kumar was specifically named in paragraphs 290 and 291 of the case diary i.e. the statement under Section 164 Cr.P.C. of the two witnesses.

In my opinion, therefore, the case of this petitioner is on entirely different footing than the other accused persons. Accordingly, I direct that the petitioner, above named, be released on bail on furnishing bail bond of Rs.10,000/- (Ten thousand) with two sureties of the like amount to the satisfaction of the learned Chief Judicial Magistrate, Jehanabad on condition that one of the

bailers should be the close relation of the petitioner and that the petitioner will be present on the date when the dates will be fixed for charge and thereafter on the date when the witnesses shall be examined by the prosecution. In other words, it is made clear that at the instance of the present petitioner, there should not be hindrance in the trial of the case.

(Mungeshwar Sahoo, J)

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