

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32299 of 2016

Arising Out of PS.Case No. -24 Year- 2015 Thana -PIRPAINTI District- BHAGALPUR

Murari Tiwari @ Krishna Murari Tiwari, Son of Mahendra Nath Tiwary, resident of Village- Bakharpur, Police Station- Pirpainty, District- Bhagalpur.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

Appearance :

For the Petitioner : Mr. Ramakant Sharma, Sr. Advocate and
Mr. Rajesh Kumar, Advocate.
For the Opposite Party : Mr. Nirmal Kumar Sinha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

3 05-10-2016 Learned counsel for the petitioner is permitted to make necessary corrections in the prayer portion of the bail application.

Heard learned senior counsel for the petitioner and learned counsel for the State.

The petitioner is languishing in custody since 14.02.2015 in connection with Pirpainti P.S. Case No. 24 of 2015 for the offences instituted under Sections 385, 364, 302/34 of the IPC and 27 of the Arms Act.

The prosecution story, in brief, is that on 29.01.2015 at 11.30 P.M. in the night, the petitioner alongwith three FIR named accused persons armed with rifle, gun and rod reached at the house of the informant. At that time, he alongwith his father was



sitting at his *Darwaja* and there was light flashing. All the four accused persons thereafter caught his father Shivmuni Pandey and demanded Rs. One Lac as *Rangdari* and on refusal, they assaulted him and took away him from the *Darwaja* and told that if the father of the informant will not pay *Rangdari* they will kill him and also threatening not to raise alarm otherwise they will also kill him. Thereafter they took away his father and after some distance the informant heard the sound of firing then he told anything to nearby persons then all the persons proceeded for searching his father and after some distance towards northern side of the house on the way, the dead body of his father Shivmuni Pandey was found.

The earlier bail application of the petitioner was rejected vide Cr. Misc. No. 36173 of 2015 dated 12.10.2015. Learned counsel for the informant had appeared in the aforesaid case and had filed a counter-affidavit. It was submitted by him that the trial has already proceeded and one of the prosecution witnesses has already been examined in the case. It was further submitted that all the witnesses will be examined within a period of eight months. The said application was disposed of with a direction to the court below to conclude the trial preferably within a period of eight months on the undertaking given by learned counsel for the

informant. In light of the aforesaid observation of this Court in the said order, this is second attempt for grant of bail on behalf of the petitioner.

A report was called for from the court below regarding the stage of the case. The same is kept on the record. It has been reported that out of 10 witnesses, 05 witnesses have already been examined on behalf of the prosecution. Meaning thereby, in last one year, only four witnesses have been examined on behalf of the prosecution, after rejection of the earlier bail application of the petitioner.

It has been submitted on behalf of learned senior counsel for the petitioner that the prosecution has adopted a delaying tactics and not producing the prosecution witnesses on the date fixed by the court below. Though in the F.I.R., there is general and omnibus allegation of firing upon the deceased by the accused persons including the petitioner but from perusal of the postmortem report, it is evident that there is no gun shot injury found on the body of the deceased. The petitioner has already remained in custody for 1½ years and there is no likelihood in near future of the trial being concluded.

On behalf of the State, it has been submitted that the petitioner is named in the F.I.R.

Considering the aforesaid facts and circumstances, let 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 each to the satisfaction of the learned 3rd Additional District & Sessions Judge, Bhagalpur, in connection with Sessions Trial No. 394 of 2015, arising out of Pirpainty P.S. Case No. 24 of 2015.

It is further directed that the petitioner shall co-operate during the trial. If the court below feels that the petitioner is not co-operating during the trial the court below will be at liberty to cancel the bail of the petitioner.

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(Sudhir Singh, J)