

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.29832 of 2016

Arising Out of PS.Case No. -148 Year- 2004 Thana -MARHAURA District- SARAN

1. Vijay Kumar Singh @ Munna Singh @ Munna Thakur S/o Shivji Singh @ Shivji Thakur, resident of Village- Nethuan, P.S.- Marhowrah, District- Saran.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

Appearance :
For the Petitioner/s : Mr. Raghwendra Kumar
For the Opposite Party/s Mr. Uday Pratap Singh

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER

07/ 27.10.2016 Record is placed for passing order. I have heard all the concerned parties.

Petitioner seeks bail in connection with Marhowrah P.S. Case no. 148/2004 registered under section 302/34 of the Indian Penal Code and 27 of the Arms Act.

Petitioner is named in the first information report with specific allegation that he fired by rifle at the deceased and after that other FIR named accused made indiscriminate firings on the deceased as a result whereof he died then and there.

Submission on behalf of the petitioner is that according to the prosecution case itself, deceased was killed near the house of one Sipahi Prasad but mother of the aforesaid Sipahi Prasad was examined in course of investigation and she did not name any person rather she failed to identify the assailants which is evident from perusal of para



122 of the case diary. It is further submitted by him that son of deceased was also examined in course of investigation vide para 119 of the case diary and the aforesaid witness stated that while he was returning from Gora market, he saw the petitioner and his younger brother making firing on the deceased and having seen the aforesaid occurrence while he was going to inform his family members, he met his mother and other family members on his way.

Submission on behalf of the petitioner is that statement of son of the deceased goes to show that the informant is not an eye-witness of the alleged occurrence rather she reached on the place of occurrence when the occurrence had already taken place. It is further submitted that initially, investigation was taken by police but later on, investigation was handed over to C.I.D and when the officials of C.I.D recorded the statements of several witnesses, the above stated witness disclosed that none could identify the assailants and, as a matter of fact, after one day of the alleged occurrence, the name of the petitioner and other accused came in this case. To fortify the aforesaid contentions, he referred several paragraphs of the case diary including the statement of one local chaukidar. It is further submitted that, as a matter of fact, when C.I.D took the charge of investigation, arrest of the petitioner was stayed but subsequently, C.I.D submitted charge sheet against which petitioner filed criminal writ and thereafter, sought anticipatory bail before this court and that was reason, petitioner could not earlier surrender in this case.

On the other hand, learned counsel appearing for the informant vehemently opposed the prayer submitting that not only

informant but several other eye-witnesses have also supported the prosecution story which is evident from perusal of paragraphs 8, 9,11, 12 etc of the case diary.

The post mortem report of the deceased goes to show that the deceased sustained one firearm injury and his cause of death is said to be caused by firearm. Informant and other eye-witnesses claimed that it was the petitioner who first fired on the deceased causing firearm injury to him.

No doubt, when C.I.D took the charge of investigation and recorded the statements of some witnesses, the aforesaid witnesses stated that just after the alleged occurrence, no one was uttering the name of the petitioner and other accused rather after one day of the alleged occurrence, the name of the petitioner and other FIR named accused came in this case but the aforesaid statements of the witnesses appear to be suspicious because fardbeyan of the informant was recorded on 10.8.2004 at about 7.15 P.M and the present occurrence had taken place on the same day at 4.45 P.M and, therefore, it is obvious that the informant named the petitioner and other accused within two hours of the alleged occurrence.

It is also submitted on behalf of the petitioner that in course of investigation, it was found that rifle of the petitioner had been deposited in Paliganj house and at the time of alleged occurrence, petitioner was engaged in his treatment but both the above stated facts were doubted by the Investigating officer in course of investigation. The Investigating officer found the involvement of the petitioner in the present case and submitted charge sheet. Therefore, in my view, it



is not a fit case for grant of bail to the petitioner and accordingly, his prayer for bail in connection with Marhowrah P.S. Case no. 148/2004 pending in the court of the Chief Judicial Magistrate, Saran at Chapra stands rejected.

shahid

(Hemant Kumar Srivastava,J)

