

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.41637 of 2015

Arising Out of PS.Case No. -128 Year- 2014 Thana -CHENARI District- SASARAM (ROHTAS)

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Taukir Beg, son of Late Rahmatullah Beg, aged abput 65 years resident of
Village Khadauli, P.S. Chenari, District Rohtas.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sudha Chandra, Adv.
For the Opposite Party/s : Mr. Satyendra Narayan Singh(App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

8 08-03-2017 The petitioner has renewed his prayer for bail in a

case registered for the offences punishable under Sections 302 of

the Indian Penal Code and 27 of the Arms Act. The petitioner is

languishing in custody since 05.08.2014.

The prosecution case as per the fardbeyan of Israt
Beg recorded at 4.15 PM on 31.07.2014 by S.I. Pankaj Kumar
Saini, S.H.O. Chenari is to the effect that on 31.07.2014 at about
3.30 PM the informant was taking meal in the meantime he heard
the sound of gun firing, thereafter, the informant's son came and
conveyed that this petitioner Taukir Beg has shot at Sabir Hussain
Beg, the brother of the informant. Thereafter, the informant came
out to see the petitioner standing armed with his licencee gun and
his elder brother Sabir Hussain Beg was lying on the ground



soaked with blood. Thereafter, the petitioner pointed the gun on his elder brother, thereafter Sabir Beg was taken to hospital where he was declared dead.

It is submitted by the learned counsel for the petitioner that the informant is not an eye-witness to the actual occurrence. The son of the informant who informed the informant about the petitioner firing at the victim has not been examined by the police during entire investigation. The petitioner, informant and the victim are own brothers. The petitioner is ex-navy personnel and due to land dispute, the accusation has been levelled. Neither the petitioner has any licensee gun nor any gun has been seized during entire investigation. Paragraph no. 25 of the case diary reflects that I.O. tried to record statement of wife of the victim Rabana Beg on 01.04.2014 but she did not give her statement and ultimately her statement was recorded in paragraph no. 36 of the case diary on 04.08.2014 and on the same day the statements of the daughter of the victim Saba Khatoon and son of the victim Md. Kaif were recorded in paragraph nos. 37 and 38 of the case diary where all of them have stated that they were at the roof of the house and on hearing the voice they came down and went to the place of occurrence to see this petitioner firing. It is further submitted that there was no occasion for them not to lodge



the FIR and convey about their eye-witnesses recently to the informant. Their claim as eye-witness appears to be subsequent development because their statements were recorded after four days of the occurrence. The petitioner is seventy years old. Paragraph no. 24 of the case diary contains the examination of place of occurrence which does not suggest that any blood stain was found at the place of occurrence which negates the accusation levelled in the FIR as well as the statements of victim's wife, son and daughter.

Learned APP, after going through the case diary submits that admittedly the informant is not the eye-witness to the occurrence but he was informed by his son whose name has not been disclosed though none of the son of the informant have been examined by the I.O. nor any gun has ever been seized, however, he submits that statement of independent witness Sahabudin has been recorded in paragraph no. 65 of the case diary on 30.10.2015 who supports the prosecution case.

In pursuance to the order dated 25.01.2017, the learned Addl. Sessions Judge-VII, Rohtas at Sasaram transmitted the report which reflects that the charge was framed on 11.08.2016 but in spite of issuance of bailable warrant, none of the witnesses have been produced till date.



It is further submitted by learned counsel for the petitioner that the informant has migrated to Saudi Arab and the family of the victim have settled at Delhi, hence, there is no chance of him being produced. A statement has been made in para 3 of the petition that the petitioner has no criminal antecedent.

Considering the fact that the occurrence appears to have occurred in the background of land dispute, statement made in paragraph no. 3 of the petition the petitioner having no criminal antecedent aged about seventy years, there is no likelihood of trial being concluded in near future, the informant being not an eye-witness to the actual occurrence as he came to know about the occurrence from his son who has not been examined by the police, examination of the wife, son and daughter of the victim after four days of the occurrence, the examination of independent witness Sahabudin after about two and half months of the occurrence, the non-finding of bloodstain on the place of occurrence by the I.O. prima facie cloud the prosecution case and the investigation being already concluded, let the above named petitioner be released on bail on furnishing bail bonds of ₹10,000/- (ten thousand) with two sureties of like amount each to the satisfaction of learned Addl. District and Sessions Judge-VII, Sasaram at Rohtas in connection with S. Tr. No. 149 of 2015 arising out of Chenari P.S. Case No.



128 of 2014.

Learned trial court will positively cancel the bail bonds of the petitioner if he defaults for two consecutive occasions during trial or substantially gets involved in some serious nature of offence.

(Dinesh Kumar Singh, J)

Amrendra/-

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