

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.32603 of 2017

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1. Kesho Mandal, S/o Dip Narain Mandal, Resident of Village- Govindpur,
P.S.- Pirpainty, District- Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Opposite Party/s

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Appearance :

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

For the Opposite Party/s : Smt. Veena Kumari Jaiswal-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

03 16-08-2017 Heard learned counsel for the petitioner as well as

learned Additional Public Prosecutor.

Deceased is the first informant and so, the first information report happens to be dying declaration wherein petitioner has been arrayed as an assailant, who shot at. Deceased was immediately removed to hospital where during course of treatment, his fard-bayan was recorded, his further statement was recorded and his death had also occurred.

Learned counsel for the petitioner has submitted that though there happens to be consistency so far allegation is concerned, but that has got no relevance in the background of the fact that deceased had died on 13.06.2016, while the occurrence is in between 11/12.05.2016. Apart from this, it has also been submitted that from Para-48 of the case diary, wherein the I.O. noted down the finding of the post mortem, it is evident that deceased had not died on account of firearm injury rather he died



out septicemia, which happens to be afterward event being caused on account of some sort of infection and for that, the treating doctor should be held accountable. Because of the fact that death has been caused one month after the occurrence, therefore, the allegation would not fall within the ambit of Section 299 of the I.P.C. and so, even considering the allegation on its face, it will speak with regard to culpable homicide not amounting to murder attracting Section 304 Part-I or II of I.P.C. and whereupon the petitioner should be released on bail.

On the other hand, learned Additional Public Prosecutor opposed the prayer.

From perusal of the Para-48 of the case diary, it is evident that bullet remained, which could not be taken out from the wound even after operation and the same was found during course of post mortem. Furthermore, the doctor had also opined the injury to be grievous as well as dangerous to life caused by firearm and whatever subsequent event happens to be, for that, the aforesaid firearm injury is responsible coupled with the fact that petitioner has been identified to be the main assailant.

As such, prayer for bail is rejected.

(Aditya Kumar Trivedi, J)

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