

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.6346 of 2017

Arising Out of PS.Case No. -70 Year- 2014 Thana -NAYA RAM NAGAR District- MUNGER

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Anil Kumar Jha, Son of Makrand Jha, Resident of Village- Kuan Garhi,
P.S.- Sagrampur, District- Munger.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pranav Kumar Jha

For the Opposite Party/s : Mr. Sri Atul Chandra

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

5 08-04-2017 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

The petitioner is apprehending his arrest in a case registered for the offences punishable under Sections 147, 148, 149, 302 and 120B of the Indian Penal Code and Section 27(i) of the Arms Act.

According to FIR, when the informant heard the sound of firing she came out of her house and saw that the five persons including the petitioner were firing at her husband who died after receiving fire arm injury.

Submission of the petitioner is that witness Bikash Kumar stated before the police as well in his statement before the Magistrate under Section 164 Cr.P.C. that co-accused Abhijit Kumar had caused fire arm injury to the husband of petitioner which resulted in his death. He further submits that the doctor,



who performed postmortem examination, has found single fire arm injury of wound of entry and exit wound and the allegation is leveled against co-accused Abhijit Kumar. He next contends that the petitioner was not sent up for trial vide Annexure-2. However, the learned court below disagreeing with the police report took cognizance against the petitioner also.

On the other hand, learned counsel for the informant has opposed the prayer on the ground that other co-accused, who faced trial in Sessions Trial No.86 of 2015, have already been convicted and the petitioner was also a member of unlawful assembly. Therefore, he does not deserve anticipatory bail. He next contends that the process under Sections 82 and 83 Cr.P.C. has already been issued against the petitioner vide Annexure-2 to the counter affidavit. Therefore, this anticipatory bail application is not maintainable. Learned counsel has relied on a judgment of the Hon'ble Apex Court in Lavesch Vs. The State reported in (2012) 8 SCC 730 for his submission that once the petitioner was declared proclaimed offender anticipatory bail application would not be maintainable.

The aforesaid case law is not helping the informant in the present facts and circumstances of this case as no process was ever served on the petitioner after cognizance nor the petitioner was declared permanent absconder in the case. Only process of



proclamation was issued against the petitioner by the learned court below without satisfying that any earlier process of summons or warrant was ever served on the petitioner. Moreover, there is no evidence that the petitioner had caused fire arm injury to the deceased. Therefore, at this stage, it is not necessary to compel the petitioner to go to jail.

Considering the aforesaid facts, let the petitioner, above named, in the event of his arrest or surrender before the court below within a period of thirty days from the date of receipt of the order, be released on bail on furnishing bail bonds of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned A.C.J.M., Munger/Successor Court in connection with Naya Ramnagar P.S. Case No.70 of 2014, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure and subject to the further condition that petitioner shall fully cooperate with the investigation and trial of the case, failing which the Court below shall be at liberty to take steps for cancellation of the bail bonds of the petitioner in this case.

Arvind/-

(Birendra Kumar, J)

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