

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.969 of 2016**

Arising Out of PS.Case No. -63 Year- 2016 Thana -SABOUR District- BHAGALPUR

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1. Rohit Sah Son of Sri Akhileshwari Sah Resident of N.C. Chatterji Road,
Mundichak, P.S.- Tilkamanjhi, District- Bhagalpur.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ranjan Kumar Jha, Advocate

For the Respondent/s : Mr. Binay Krishna, Spl.PP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 28-02-2017

Heard learned counsel for the appellant as well as
learned Spl.PP.

2. Tinku Kumar who happens to be brother of
deceased Santosh Kumar gave his Fard-e-beyan stating therein
that while Santosh being engaged in lifting idol for immersion,
was taken away by Md. Ranu. Just about five minutes after, Md.
Ranu came back and informed that Santosh has been shot at near
Tea Stall of Pramod Kumar Gupta whereupon he along with his
brother, Pappu Paswan rushed and found Santosh in a pool of
blood. Furthermore, on query, he came to know that Bambam,
Vishal, Raushan along with 3-4 unknown persons were seen
fleeing therefrom by a new Ind-Suzuki motorcycle. It has also
been disclosed that there was an altercation amongst Santosh
(deceased), Bambam, Vishal and Raushan and for that they had



threatened Santosh to face dire consequences.

3. Learned counsel for the appellant submitted that admittedly, informant and Pappu Paswan are not eyewitnesses to the occurrence. Furthermore, place of occurrence happens to be the Tea Stall of Pramod Kumar Gupta who has been examined under para-29 of the case diary. From his statement, it is apparent that while altercation in between deceased and appellant was going on, at that very moment, one another person came and shot at the deceased. So, appellant is not the assailant of the deceased. Furthermore, the appellant happens to be under custody since 30.06.2016.

4. Learned Special P.P. has submitted that under pre-planned manner, the instant occurrence has been committed and so appreciation should be in the same manner. Furthermore, after going through each and every circumstance, it is apparent that it is the appellant who happens to be the assailant of the deceased.

5. Gone through the case diary. From para-29, it is evident that Pramod Kumar Gupta had not disclosed presence of appellant since before at his shop. In one stroke, best known to the Investigating Officer, he had shown that there was verbal altercation in between the appellant and Santosh and during course



thereof, he was shot at by another person. Subsequently, at para-30 where the statement of son of Pramod Kumar Gupta has been recorded, wherefrom it is apparent that he had specifically stated that, the person with whom Santosh had indulged in an altercation, happens to be the assailant, though he had not named the appellant. Apart from this, other witnesses recorded under para-44 and 45 are found on that very score. During course of investigation as is evident, Md. Ranu was apprehended and in likewise manner, others were identified during course of his inculpatory extra judicial confessional statement who were apprehended and their inculpatory extra judicial confessional statement is recorded at different paragraphs. Sonu Kumar at para-61, whereunder appellant also has been found identified to be the assailant, para-62, Mukesh Ram, para-71, Pappu Sah @ Pappu Sonar and para-76, appellant himself. It is also evident that appellant along with Pappu was apprehended along with motorcycle which was used during course of commission of crime and for that Industrial PS Case No. 29/2016 has been registered under Section 25 (1-b)a/26 of the Arms Act.

6. Considering the nature of the material having been collected during course of investigation along with statement of the witnesses, for the present, I do not see it a fit case for grant



of bail. Consequently thereupon, the instant appeal is dismissed.

7. If so advised, appellant may renew his prayer after examination of Govind Kumar son of Pramod Kumar Gupta.

(Aditya Kumar Trivedi, J)

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