

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.32636 of 2018

Arising Out of PS.Case No. -687 Year- 2017 Thana -PHULWARI District- PATNA

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Md. Moon @ Moon @ Quamrul Hasan, aged about 22 years, Son of Md. Suhail @ Gorakh, resident of Gulistan Mohalla, P.S.- Phulwari Sharif, District- Patna

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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with

Criminal Miscellaneous No.33134 of 2018

Arising Out of PS.Case No. -687 Year- 2017 Thana -PHULWARI District- PATNA

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Md. Shakib @ Md. Shakib Hassan, Son of Md. Abid @ Md. Abid Hassan, Resident of Village/ Mohallah- Munir Colony, P.S.- Phulwarisharif, District- Patna

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.32636 of 2018)

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr. Sumit Kumar Jha, Advocate

For the State : Mr. Nagendra Prasad, APP

(In Cr.Misc. No.33134 of 2018)

For the Petitioner/s : Mr. Manoj Kumar, Advocate
Mr. Raj Narayan Mishra, Advocate

For the State : Mr. Brajendra Nath Pandey, APP

For the Informant : Mr. Praveen Kumar, Advocate

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

3 03-07-2018 Heard learned counsel for the petitioners and the learned counsel appearing on behalf of the State as well as the learned counsel for the informant.



Petitioner Md. Moon @ Moon @ Quamrul Hasan in Cr.Misc. No.32636 of 2018 and petitioner Md. Shakib @ Md. Shakib Hassan in Cr.Misc. No.No.33134 of 2018 are in custody since 22.12.2017 and 23.11.2017 respectively, in connection with Phulwarisharif P.S. Case No.687 of 2017 registered for the offences under Sections 364, 302, 201, 34 of the Indian Penal Code.

Mr. Y.V. Giri, learned Senior Counsel appearing on behalf of the petitioner Md. Moon @ Moon @ Quamrul Hasan submits that the entire case against the petitioner is based on conjecture and surmise as none of the earliest witnesses have stated that the present petitioner was also involved in the initial dispute between the parties, which eventually led to the murder of the deceased Mukesh Kumar. It has further been submitted that Gautam Kumar, Suraj Kumar, Dharambir and Rahul @ Bobby, who are said to have earliest knowledge about the occurrence, have not named the present petitioner Md. Moon @ Moon @ Quamrul Hasan in the conflict and dispute, which arose on account of the fight which has ensued on the Diwali night. It has further been submitted that only in the statement made under Section 164 Cr.P.C., they have given a clear picture as to what had happened on that day, but not named the present petitioner.



As such, the petitioner has been named in connection with the present case on the basis of speculation and inclusion of his name in the F.I.R. is wholly uncalled for and he should not be prosecuted in the manner as has been done in connection with the present case.

Learned counsel for the petitioner Md.Shakib @ Md. Shakib Hassan in Cr.Misc. No.33134 of 2018 also submits that similar is the situation with regard to the present petitioner Md. Shakib @ Md. Shakib Hassan and his name has come later on and not in the statement made by the so-called eye-witness to the first part of the occurrence. He further submits that this petitioner had no role in the dispute which took place on the Diwali night and only on presumption, his name has been included in the present case.

Diary in the present case was called for, which has since been received.

Learned counsel for the informant has also filed his *Vakalatnama* in Cr.Misc. No.33134 of 2018 and has opposed the prayer for bail in the case of Md. Shakib @ Md. Shakib Hassan.

Learned counsel for the State after perusal of the case diary submits that though it is stated in the statement before police that these petitioners had also participated, yet in their



statement made before the court, names of these petitioners did not find place. It has further been submitted that on the basis of the confessional statement made by one co-accused, the body of the deceased Mukesh Kumar was recovered from the graveyard and there is no further material in the case diary to show that these petitioners have also participated in the occurrence which led to the murder of the deceased and his body was concealed in the graveyard.

Learned counsel for the petitioners have also brought on record, certain other bail orders in the case of the other similarly situated person, vide Annexure 2 to Cr.Misc. No.33134 of 2018.

In view of the aforementioned facts and circumstances and that petitioner Md. Shakib @ Md. Shakib Hassan in Cr. Misc. No.33134 of 2018 has no criminal antecedent whereas there are two other criminal cases in the case of petitioner Md. Moon @ Moon @ Quamrul Hasan in Cr.Misc. No.32636 of 2018, let both the petitioners, above named, be released on bail on their furnishing bail bonds of Rs.10,000/- (Ten thousand) each with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Patna in Cr.Misc. No.32636 of 2018 and to the satisfaction of Sri V.P. Modi, learned Additional Chief Judicial Magistrate-XVth, Patna in Cr.



Misc. No.33134 of 2018, in connection with Phulwarisharif P.S.
Case No.687 of 2017, subject to the following conditions:

(1) One of the bailors will be the close relative of the petitioners, preferably, father, mother, brother, sister and/or their wife.

(2) The petitioners shall not indulge themselves in any similar offence till conclusion of the trial.

(3) The petitioners shall remain physically present in court on each and every date during trial and in the event of their failure on two consecutive dates without sufficient reasons, their bail bonds shall be liable to be cancelled by the learned court concerned.

(4) The petitioners shall co-operate with the investigation, if not already concluded, and make themselves available as and when so required and in case of failure, the State shall be at liberty to move for cancellation of bail.

(Anjana Mishra, J)

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