

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10123 of 2016

Arising Out of PS. Case No.-153 Year-2011 Thana- DEORIYA District- Muzaffarpur

Lalan Sahani, Son of Bijali Sahani, Resident of village- Dharfary P.S
Dewariya District -Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. S. N. Thakur, Adv.

For the Opposite Party/s : Mr. J. N. Thakur, APP

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

11 02-05-2018 Heard Mr. S.N. Thakur learned counsel for the
petitioner and Mr. J.N. Thakur learned APP for the State.

The petitioner has renewed his prayed for bail in connection with a case registered for the offences punishable under Sections 120B, 147, 148, 149, 452, 302, 307, 379 of the IPC and Section 27 of the Arms Act.

The prosecution case as per the fardebayan of Pravin Kumar, recorded by R.N. Sharma, S.I.-cum-SHO, Deoria Police Station, on 07.12.2011 at 5.00 A.M., is to the effect that on 04.12.2011 at 7.00 PM, the father of the informant, Vinay Kumar Singh, was sitting at his door while talking with some persons. In the meantime, 15 to 20 accused persons, 10 named and rest unknown, including the petitioner, armed with gun, country made rifle, country made pistol, came and started abusing the father of the informant. It is alleged that co-accused



Angad Sahni and Rambhu Rai put a rope around the neck of the father of the informant and thereafter co-accused Krishna Sahni and Lalan Sahni (petitioner) aimed rifle on his temporal region. The informant tried to rescue his father, but he was also taken on gun point. In the meantime, co-accused Sipahi Sahni, Binod Baitha, Sanjeet Sah, Ram Lal Sahni, Munna Rai and 3-4 unknown dragged the informant towards the door and started assaulting him with brick on his head. The informant tried to protect his head by covering it with both his hands, as a result, his fingers of both the hands got badly injured. Thereafter, Sipahi Sahni, after ordering to kill the informant went towards his father and dragged his father towards brick-soling road in front of the door. Thereafter, his hands and legs were tied by co-accused, Angad Sahni and Rambhu Rai. Thereafter, all the accused persons aimed their arms on him, whereupon, co-accused, Birendra Singh and Krishna Sahni shot on the abdomen of the father of the informant with rifle, while this petitioner and co-accused, Munna Rai shot on his head with country made pistol. It is further alleged that when father of the informant fell down on the ground, then co-accused, Sanjeet Sah and Binod Baitha also fired from their rifle, but the informant could not see as to whose firing hit which part of the



body of his father. It is further alleged that the accused persons took away a Samsung Mobile and Rs.10,000/- from the pocket of the father of the informant. It is also alleged that co-accused, Mantu Sah and Rajendra Sah were keeping a close watch over the father of the informant for updating the accused persons.

It is submitted by the learned counsel for the petitioner that due old enmity the petitioner has been made an accused. It is specific case of the informant that initially co-accused, Birendra Singh and Krishna Sahani caused injury with rifle on the abdomen of the father of the informant, but there is no injury found on the abdomen. Moreover, there is accusation of firing by co-accused Sanjeet Sah and Vinod Baitha also, but no corresponding injury has been found during post-mortem. It is alleged against the petitioner and co-accused Munna Rai to have caused injury with country made pistol, though at the beginning of the fardbeyan, the petitioner is alleged to have been armed with a rifle. Only two injuries on the right temporal region have been found. The injury no. 3 is the wound of exit on the left parietal region which is bigger in size than the wound of entry which suggests that the injury has not been caused by country made pistol. Moreover, the other assailants like Birendra Singh, Sanjeet Sah and Mantu Sah have been granted



bail vide Criminal Miscellaneous No. 36885 of 2012, Criminal Miscellaneous No. 14807 of 2012 and Criminal Miscellaneous No. 21124 of 2012.

Learned counsel for the petitioner further submits that Co-accused Munna Rai has still not been apprehended, hence, he has not been put on trial. Out of 36 charge-sheet witness, only 13 have been examined so far. Hence, there is no likelihood of conclusion of trial in near future. Earlier, the prayer for bail of the petitioner was rejected vide order dated 05.02.2015, passed in Criminal Miscellaneous No. 33408 of 2014 with a liberty the petitioner to renew the prayer for bail if the trial does not get concluded with a period of one year. The petitioner is languishing in custody since 25.08.2012 and a statement has been made in paragraph no. 3 of the petition that he is not having any criminal antecedent, apart from the present case.

Mr. J.N. Thakur, learned APP for the State relying upon the statement made in the supplementary counter affidavit, dated 25.04.2018, filed on behalf of the Senior Superintendent of Police, Muzaffarpur, to the effect that though the informant and the eye witness have not been examined till date, but efforts have been made to produce them for their examination. Though,



co-accused, Munna Rai has still not been apprehended, but efforts are being made to apprehend him. However, order of attachment has been issued against him by the learned Court below vide order dated 09.04.2018.

Having heard learned counsels for the parties, this Court is dismayed to find that despite passing several orders since February, 2017 for getting trial concluded, the trial has not been concluded since the prosecution has failed to produce the witness before the learned trial Court.

This Court vide order dated 05.02.2015, passed in Criminal Miscellaneous No. 33408 of 2014, earlier rejected the prayer for bail of the petitioner with a liberty to renew the prayer for bail, if the trial does not get concluded within a period of one year. Now it appears that more than three years have passed, but no substantial progress has been made in trial. Moreover, it appears that the trial is not likely to be concluded in near future. So far as the accusation is concerned, the specific case of informant is that initial firing was made by co-accused Birendra Singh and Krishna Sahani with rifle causing injury on the abdomen of the informant, but post-mortem report suggests no such injury. Secondly, it is alleged that this petitioner and co-accused Munna Rai caused injury with country made pistol on



the head of the father of the informant though, two entry wounds have been found on the right temporal region, but injury no. 3 which is the wound of exit found at the left temporal region suggests that it is bigger in size than the wound of entry which prima facie suggests that it has not been caused by country made pistol. It also appears that no injury alleged to have been caused by Sanjeet Sah and Vinod Baitha with rifle has been found by the doctor.

Hence, considering the facts that the accusation is not being corroborated by the medical opinion, in view of the liberty granted to the petitioner to renew the prayer for bail, if the trial will not be concluded within one year and the fact that the petitioner is languishing in custody since 25.08.2012, coupled with statement made in paragraph no. 3 of the petition that the petitioner is not having any criminal antecedent, let the petitioner abovenamed be directed to be released on bail on furnishing bail bonds of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned 4th Additional District and Sessions Judge, Muzaffarpur, in connection with Sessions Trial No. 427 of 2014, arising out of Deoriya P.S. Case No. 153 of 2011 with a condition to remain physically present



before the learned Court below on each and every date till disposal of the case.

However, the learned Court below will be at liberty to cancel the bail bonds of the petitioner, if he defaults for three consecutive occasions during trial.

(Dinesh Kumar Singh, J)

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