

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.37232 of 2017

Arising Out of PS.Case No. -282 Year- 2012 Thana -GARAUL District- VAISHALI(HAJIPUR)

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Avinash Kumar Pappu @ Abinash Kumar Pappu @ Pappu Son of Prasad Patel, R/o Village- Kashimpur, P.S.- Khagaria Sadar, District- Khagaria (Bihar).

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anant Kumar-1

For the Opposite Party/s : Mr. Sri Manoj Kumar - 1

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

06/ 25-04-2018

Heard learned counsel for the petitioner and

learned APP for the State.

The petitioner has renewed the prayer for anticipatory bail in a case registered for the offences punishable under Sections 307, 326, 380/34 of the Indian Penal Code and Section 27 of the Arms Act.

The prosecution case got initiated with the fardbeyan of Satyendra Kumar recorded by A.S.I. of Goraul P.S. on 28.08.2012 at 8.30 P.M. at Sadar Hospital, Hajipur in Emergency Ward, is to the effect that 28.08.2012 at 4.00 P.M. the informant was standing at the gate of his boundary, in the meantime, co-accused Gaurav Kumar, petitioner Avinash Kumar



@ Pappu, Nitu Kumari and 2-3 unknown persons came and Nitu Kumari enquired from the informant about Vishwanath Singh and threatened not to leave him alive. The informant expressed his unawareness about Vishwanath Singh, then Nitu Kumari said that the informant has concealed him in his house, thereafter, the petitioner abused the informant by saying that he is knowing everything. Thereafter, for not disclosing the whereabouts of Vishwanath Singh, on the order of Nitu Kumari, Gaurav Kumar fired with his gun and petitioner fired from his country made pistol, as a result, the informant received injury on his thigh and hand. In an injured condition informant was taken to Goraul Hospital and from there Sadar Hospital, Hajipur. Subsequently, the informant came to know that the accused persons robbed the jewellery and other articles from his house. The motive behind the occurrence is with regard to transfer of share of the joint family property and Nitu Kumari being the daughter-in-law of the uncle of the informant demanded share in the joint family property.

It is submitted by learned counsel for the petitioner that the accusation has been levelled in the background of lodging of Goraul P.S. Case No. 129 of 2011 against Vishwanath Singh and others with accusation under



Sections 307, 323, 379 and 498A/34 of the Indian Penal Code by co-accused Nitu Singh. It is further submitted that the injury has been found caused by firearm. However, the petitioner was alleged to have been armed with country made pistol when the injury has been found caused by gun.

Earlier the anticipatory bail application of the petitioner was disposed of vide order dated 12.02.2013 passed in Cr. Misc. No. 1370 of 2013 with observation that the learned Court below will consider the prayer for regular bail of the petitioner on his surrender. Subsequently, on conclusion of the investigation the petitioner was not sent up for trial but vide order dated 09.06.2016 the learned Sub-divisional Judicial Magistrate, Vaishali at Hajipur differing with the final form took cognizance under Sections 307, 326/34 of the Indian Penal Code and Section 27 of the Arms Act against Gaurav Kumar and the petitioner Avinash Kumar @ Pappu, however, Nitu Kumari and Shanti Singh were not sent up for trial, but the order taking cognizance does not suggest the reason for distinguishing the case of Nitu Kumari and Shanti Devi to that of petitioner Avinash Kumar and Gaurav Kumar.

Learned APP, however, submits that the petitioner was not sent up for trial but submits that differing with



the final form cognizance has been taken against the petitioner.

Considering the fact that in the background of land dispute the accusation has been levelled and the case lodged by the accused side at earlier point of time, moreover, and on conclusion of investigation after considering the material collected during investigation, the petitioner was not sent up for trial, hence, on these grounds, this Court is inclined to revise the earlier order.

Accordingly, let the above named petitioner be released on anticipatory bail in the event of arrest or surrender before the learned Court below within a period of twelve weeks from today, on furnishing bail bonds of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Vaishali at Hajipur in connection with Goraul P.S. Case No. 282 of 2012, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

(Dinesh Kumar Singh, J)

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