

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.41976 of 2018

Arising Out of PS.Case No. -12 Year- 2017 Thana -HARSIDHI District- EASTCHAMPARAN
(MOTIHARI)

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1. Sunil Sah S/o Late Raj Bansi Sah, R/o Shankar Sharaiya, P.S.-
Turkauliya, District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Umesh Chandra Verma

For the Opposite Party/s : Smt. Pushpa Sinha

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

6 28-08-2018 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

The petitioner has been in custody since 02.08.2017
in connection with Harsidhi P.S. Case No. 12 of 2017 registered
for the offences punishable under Sections 302/34 of the Indian
Penal Code and Section 27 of the Arms Act.

Learned counsel for the petitioner has strenuously
urged that the statement made in the First Information Report by a
critically ill patient cannot be accepted in toto as it has to be
proved that the victim was in a position to make such statement. It
is further submitted by the learned counsel for the petitioner that in
the case diary and in the subsequent investigations, several of the
witnesses have stated that Alam Miya had fired which had
accidentally hit the deceased resulting to his injury and death.



Learned counsel for the petitioner further submits that in view of the contrary materials which are available in the case diary, the petitioner may be extended the privilege of bail.

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

Learned counsel appearing on behalf of the State after perusal of the case diary submits that the petitioner does not deserve the benefit of bail inasmuch as he is said to be the main assailant and in his statement at the earliest occasion before the police and the doctor, he has categorically stated that the petitioner had fired from his country-made pistol leading to injuries. It is further submitted by the learned counsel for the State that the wife as well as the sister of the deceased has put their thumb impression while the deceased was making the statement and, therefore, it must be treated as dying declaration by the petitioner. Learned counsel for the State has also submits that though it is stated in the petition for bail that the petitioner is having three criminal antecedents, it has been found on investigation in the case diary that the petitioner has 11 cases in which he has been made an accused and for that reason also the petitioner does not deserve the benefit of bail.

Having heard learned counsel for the parties and upon



consideration of all the facts and circumstances, it appears that there is a clear allegation against the petitioner that he was involved in the occurrence and was the assailant as has been stated by the victim/deceased himself at the very first instance.

Under such circumstances, I am not inclined to release the petitioner on bail.

The application for bail stands rejected.

The trial court is, however, directed to expedite the trial.

(Anjana Mishra, J)

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