

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.42519 of 2018

Arising Out of PS.Case No. -19 Year- 2018 Thana -PAKARIBARAW District- NAWADA

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1. Kapil Yadav @ Kapildeo Yadav @ Kapil Deo Yadav son of Sri Bhuneshwar Yadav resident of Village - Pakri, P.S. - Pakribarawan, District - Nawada.

.... Petitioner/s

Versus

1. The State of Bihar.

... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar No 13
Mr. Rohit Kumar

For the Opposite Party/s : Mr. U.L. Verma, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

3 20-08-2018 Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.

The petitioner has been in custody since 26.01.2018 in connection with Pakribrawan P.S. Case No. 19 of 2018 registered for the offences punishable under Sections 302/34 of the Indian Penal Code.

Learned counsel for the petitioner submits that though it is alleged that the present petitioner had attacked the deceased with *Fasuli* and gave repeated blows leading to his death. Admittedly, learned counsel for the petitioner submits that the informant is not an eye-witness to the occurrence and, therefore, it was not possible for him to say that this petitioner alone had attacked the deceased. He further submits that only because there was previous enmity, the name of the present petitioner has been drawn in connection with the



present case.

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

Learned counsel for the petitioner submits that only person who had been justified regarding the occurrence is one Chhotu Kumar who was the friend of the deceased and had gone with the deceased for attending the call of nature as per Paragraph No. 16 of the case diary.

Learned counsel for the State after perusal of the case diary submits that the statement of the sole eye-witness Chhotu Kumar has been recorded. However, though the petitioner has been named as one of those who were present at the place of occurrence and had indulged in *Marpit* but it has not been specifically averred by him that the petitioner had attacked the deceased with *Fasuli* as has been stated by the informant who is not an eye-witness to the occurrence.

Considering the fact that there is distinct cloud on the prosecution story and that the sole eye-witness has not mentioned the name of the petitioner as being one of the persons who had attacked the deceased and that he has no criminal antecedent, let the petitioner above named, be released on bail on furnishing bail bonds of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned Judicial Magistrate, 1st Class, Nawada,



in connection with Pakribrawan P.S. Case No. 19 of 2018.

(Anjana Mishra, J)

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