

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.7267 of 2018

Arising Out of PS. Case No.-209 Year-2013 Thana- AGAMKUAN District- Patna

Harsh Vardhan S/o Hari Shankar Ram, R/o Village- Nauranga, P.S.- Bairiya,
District- Balia, U.P.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Purusottam Kumar
For the Opposite Party/s : Mr. Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

12 27-11-2018

Heard Mr. Purusottam Kumar, learned counsel for the petitioner, Mr. Ajay Mishra, learned A.P.P. and learned counsel for the informant.

The petitioner seeks bail in Sessions Trial No.311 of 2014 arising out of Agamkuan P.S. Case No.209 of 2013 registered under Sections 302, 120B and 34 of the Indian Penal Code and Section 27 of the Arms Act.

Learned counsel for the petitioner submits that the prayer for bail of the petitioner was earlier rejected vide order dated 09.05.2017 passed in Cr. Misc. No.16635 of 2017 with a direction to the trial court to hold the trial on day to day basis and conclude the same within six months from the date of receipt of the order but more than 1 ½ years has elapsed from the date of earlier rejection of the bail petition of the petitioner



but the trial has not been concluded. Learned counsel for the petitioner further submits that similarly situated other accused persons namely Sudhir Kumar Yadav @ Sudhir Kumar, Vishal Kumar @ Vishal Singh, Rajesh Rajak, Rajesh Yadav @ Rajesh Singh @ Rajesh Kumar have been granted bail vide Cr. Misc. No.7930 of 2016, Cr. Misc. No.30342 of 2016, Cr. Misc. No.53795 of 2016 and Cr. Misc. No.10734 of 2017 primarily on the ground that in spite of the order passed by this Court for conclusion of trial within certain period, the trial could not be concluded within stipulated period. It is further submitted that petitioner is not named in the F.I.R. During the course of investigation, the name of the petitioner transpired. The driver of the deceased disclosed that Dhiraj Kumar firstly fired on the deceased, Shailesh Kumar. Thereafter, other accused persons including the petitioner made indiscriminate firing. Kundan Kumar also made statement under Section 164 Cr.P.C. and disclosed that it was Dhiraj Kumar who fired. Consequently, the deceased died. It is submitted that since all the other similarly co-accused persons have already been granted bail, the petitioner also deserves bail.

Mr. Ajay Mishra, learned A.P.P. submits that there is specific allegation against the petitioner that he also fired. There



are many firearm injuries on the person of the deceased and this fact itself corroborates the prosecution version that the petitioner and other accused persons also fired. It is further submitted that S.S.P., Patna filed his show cause and offered unqualified apology for not producing all the prosecution witnesses in Court causing inordinate delay in conclusion of the trial. It is further submitted that in para 14 of the show cause, it has been stated that the prosecution has already examined all the prosecution witnesses but it has been pointed out on behalf of the petitioner that cross-examination of the I.O. was deferred at the instance of the accused persons on the ground that the cross-examination of the I.O. can be done only after examination of all the material prosecution witnesses arrayed in the chargesheet. Learned A.P.P. further submits that S.S.P., Patna shall take all steps to ensure the presence of the I.O. of the case for his further cross-examination on the next Monday.

Having considered the facts and the nature of offences that the petitioner along with other accused persons are alleged to have made indiscriminate firing in the warehouse of the deceased causing his death on the spot, I am not inclined to enlarge the petitioner on bail. Accordingly, the same is rejected but before parting with the order, I am constrained to observe



that from perusal of the show cause filed by S.S.P., Patna, it is apparent that the S.S.P., Patna in spite of the order of this Court did not take effective steps for procuring the presence of the prosecution witnesses in Court causing inordinate delay in disposal of the Sessions trial. The S.S.P., Patna is not only duty bound to produce all the witnesses of the prosecution and it is more often seen that in most of the sessions trial cases, the sessions trial are prolonged on account of the lackadaisical approach of the police officials in ensuring the presence of the prosecution witnesses in Court. The S.S.P., Patna is directed not to take such lackadaisical approach in conclusion of trial. The S.S.P., Patna is further directed to ensure the attendance of the I.O. on the next Monday so that the accused persons may cross-examine him.

(Prabhat Kumar Jha, J)

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