

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.1098 of 2018

Arising Out of PS.Case No. -41 Year- 2017 Thana -JHAJHA District- JAMUI

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Dinesh Yadav, son of Tuklal Yadav, resident of Village- Mahapur, P.S.- Jhajha,
District- Jamui.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Sinha, Adv.

For the Opposite Party/s : Mr. Surendra Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 30-08-2018

Heard learned counsel for the petitioner and learned
counsel for the State.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'CrPC') has been filed by the petitioner for quashing the order dated 04.12.2017 passed by the learned 2nd Additional Sessions Judge, Jamui in S.T. No. 363 of 2017 arising out of Jhajha P.S. Case No. 41 of 2017 registered under Sections 302 read with 34 and 120B of the Indian Penal Code (for short 'IPC') and 27 of the Arms Act by which the court below has rejected the petition filed under Section 227 of the CrPC for discharge from the case.

3. Learned counsel for the petitioner submitted that the assailants of the deceased and others are specifically named in the FIR. As per the FIR, the petitioner was admittedly not present at the



place of occurrence, however, he has been named in the FIR as after committing the occurrence of offence when the accused persons escaped from the place of occurrence, the petitioner managed them to flee away by a vehicle. He contended that at least, the petitioner cannot be charged for the offence punishable under Section 302 read with 34 of the IPC as there is no active participation. According to him, the court below had erred in law in rejecting his application filed under Section 227 of the CrPC for discharge from the case.

4. On the other hand, learned counsel for the State submitted that the elder brother of the informant was killed by the accused persons, who acted in conspiracy with each other. The petitioner may not have been present at the place of occurrence but there is material to show that he was conniving with the other accused persons including the assailant of the deceased. Under such circumstances, only because he was not present at the place of occurrences, he can not be discharged from the case registered *inter alia* under Section 302 of the IPC.

5. I have heard learned counsel for the parties and perused the record.

6. I find substance in the submission of the learned counsel for the State. The petitioner is one of the named accused in the FIR. The informant is the brother of the deceased. The informant has



witnessed the occurrence and in his presence, his brother was killed. He has named the petitioner as the person, who managed the active participants in the crime to flee away. The charge is also of conspiracy. Hence, if the court below has found sufficient material to proceed against the accused, no illegality can be found with the order passed by the court below whereby it has refused to allow the application of the petitioner for discharge from the case.

7. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Kanchan/SkSuman.

AFR/NAFR	NAFR
CAV DATE	NA
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