

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32602 of 2019

Arising Out of PS. Case No.-236 Year-2018 Thana- BATHNAHA District- Sitamarhi

Shailendra Mahto @ Shailendra Kumar, Aged about 38 years, Male, Son of Late Ram Kripal Mahto @ Late Kripal Mahto, Resident of Village Matiyar, P.S. Sahiyara, District Sitamarhi.

... .. Petitioner

Versus

The State of Bihar.

... .. Opposite Party

Appearance :

For the Petitioner	:	Mr. Yogesh Chandra Verma, Senior Advocate Ms. Madhubala Verma, Advocate
For the State	:	Mr. B.N. Pandey, APP
For the Informant	:	Mr. Ashhar Mustafa, Advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

2 17-05-2019 Heard Mr. Yogesh Chandra Verma, the learned Senior counsel appearing on behalf of the petitioner, the learned Additional Public Prosecutor as well as Mr. Ashhar Mustafa, the learned counsel appearing on behalf of the informant.

Petitioner apprehends his arrest in Bathnaha P.S. Case No.236 of 2018, registered under Sections 307, 120(B) and 34 of the Indian Penal Code and under Section 27 of the Arms Act.

The informant, in gist, disclosed that while he was going to a temple with Prativa Devi, the wife of the petitioner, to offer prayer on a motorcycle and when reached on the turning of the road leading to village Kishanpur, Prativa Devi asked the informant to stop the motorcycle. Thereon Prativa Devi caught



the informant and petitioner came out from behind the trees and fired at the informant causing injury in the chest of the informant.

Mr. Yogesh Chandra Verma, the learned Senior counsel for the petitioner submits that the occurrence is said to have taken place at 5.00 A.M. on 09.08.2018. The Investigating Officer did not collect the injury of the informant from the doctor, who firstly gave him medical aid. The doctor of Nandipat Memorial Hospital examined the informant at 5.00 A.M. itself on 09.08.2018 and opined that the age of the injury is within four hours from the time of examination and this fact shows that the occurrence might have taken place much prior to 5.00 A.M. It is further submitted that the story as informed by the informant does not inspire confidence as much as the wife, who is said to have extra marital affairs with the informant, would not help her estranged husband to kill her lover. Prativa Devi @ Prativa Bharti, wife of the petitioner, was granted anticipatory bail by order dated 31.01.2019, passed in Cr. Misc. No.4737 of 2019, Annexure-4. It is further submitted that the petitioner is under treatment of Dr. Binay Karak, the Neuro Physician, and the mental condition of the petitioner was not such that it can be construed that the petitioner might have



committed the offence with his conscious mind. Even if the story disclosed by the informant is taken as true for the sake of argument, it is very natural reaction on the part of the petitioner when he saw the informant taking his wife. It is further submitted that the prosecution story does not inspire confidence and the same is not believable, therefore, the petitioner deserves anticipatory bail but the learned Additional Public Prosecutor and Mr. Ashhar Mustafa, the learned counsel appearing on behalf of the informant vehemently opposed the prayer for anticipatory bail of the petitioner and submit that besides the fact that the petitioner has got criminal antecedent, there is specific allegation that the petitioner made an attempt to kill the informant by firing at him which hit on the chest of the informant only on mere suspicion that the informant had extra marital affairs with his wife.

Having considered the facts aforesaid and the nature of allegations made against the petitioner that it was petitioner who made an attempt and fired which hit on the chest of the informant and the doctor also find grievous injury, I am not inclined to enlarge the petitioner on anticipatory bail. Accordingly, the prayer for anticipatory bail of the petitioner is rejected.



If the petitioner surrenders in the court below, the learned court below shall consider the prayer for regular bail of the petitioner on its own merit without being prejudiced by order of this Court.

(Prabhat Kumar Jha, J)

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