

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.26103 of 2016**

Arising Out of PS. Case No.-164 Year-2014 Thana- BUXAR District- Buxar

Harendra Singh @ Munna Singh, Son of Gopalji Singh, Resident of Village -  
Amsari, P.S. - Murar, District - Buxar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

**Appearance :**

|                    |   |                                 |
|--------------------|---|---------------------------------|
| For the Petitioner | : | Mr. Radha Mohan Singh, Advocate |
| For the State      | : | Mr. Jharkhandi Upadhyay, A.P.P. |

**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR**  
**ORAL JUDGMENT**

**Date : 01-08-2019**

Heard learned counsel for the parties.

2. By the impugned order dated 17.03.2016 passed in Buxar (Town) P.S. Case No. 164 of 2014, prayer of the petitioner to discharge under Section 239 Cr.P.C. has been refused by the learned court below.

3. The challenge is on the ground that there is lack of iota of evidence suggesting involvement of the petitioner in the crime alleged nor any act of the petitioner has been brought on the record to suggest that he was involved in the crime or in preparation to commit the crime.

4. According to first information report, the police intercepted 'talk' between two prisoners on mobile. Both were carrying several criminal cases against them. One was Sheru Singh in Bhagalpur jail and another was Tuntun Singh languishing in Buxar



jail. According to first information report, on 06.04.2014 both the prisoners talked with each other on mobile for about 752 Seconds. In their call, they were discussing about committing murder of the Superintendent of Police, Buxar. One of the accused stated to another that rupees ten lacs has been asked for but the money is not being arranged as some money was already invested in the business. Thereafter, another accused said that this petitioner was to be released from jail but the people are not allowing him to go out. They further talked that as soon as money would be arranged, the arms would be purchased.

5. Submission of learned counsel for the petitioner is that besides the aforesaid averment in the FIR, no other material has come during investigation of the case that the petitioner was anyway attached with those co-accused persons, by words or by action. The petitioner did nothing to substantiate that he had also conspired along with other co-accused.

6. Learned counsel for the State has referred certain paragraphs of the case diary wherein the statement of police is there and the statement is only to the extent that there is evidence that the petitioner was also involved in the conspiracy. He further submits that the petitioner has got criminal antecedent.

7. Submission is that if two accused persons were talking to bribe someone, only on that basis that person cannot be arrayed as



accused unless, there is further evidence that he had demanded the bribe. In this very case, there is no material to substantiate that the petitioner ever talked to those persons nor there is material to suggest that by action, the petitioner showed anything to even suspect that he was involved in conspiracy along with others. Hence, there was no material on the record and the learned court below has wrongly refused the prayer for discharge on the basis of statement recorded in paras 7, 8, 9, 12, 13 and 19 of the case diary. In all those paragraphs, only police officials have made their statement and they have just drawn inference on the basis of talk between the two prisoners on mobile call.

8. The law is well settled that if there is a blink chance of conviction, the charges cannot be allowed to framed. Moreover, in this case, there is no material to substantiate that the petitioner was also involved in the crime alleged. Hence, the impugned order against the petitioner is set aside and the petitioner is ordered to be discharged.

9. Accordingly, this application stands allowed.

**(Birendra Kumar, J)**

Kundan/-

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| AFR/NAFR          | N.A.       |
| CAV DATE          | N.A.       |
| Uploading Date    | 07.08.2019 |
| Transmission Date | 07.08.2019 |

