

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30810 of 2019

Arising Out of PS. Case No.-199 Year-2018 Thana- PIRO District- Bhojpur

Yogendra Singh, aged about 60 years, Male, Son of Sidhu Singh, Resident of
Village - Sikraul, P.S.- Sikrahta, Dist.- Bhojpur ... Petitioner

Versus

The State of Bihar ... Opposite Party

Appearance :

For the Petitioner	:	Mr. Rama Kant Sharma Sr. Adv. with Mr. Lakshmi Kant Sharma, Adv.
For the State	:	Mr. Yogendra Kumar, APP
For the Informant	:	Mr. Manoj Kumar, Adv.

CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

5 25-10-2019 Heard Mr. Rama Kant Sharma, Senior Counsel, assisted
by Mr. Laxmi Kant Sharma, learned counsel for the petitioner, Mr.
Yogendra Kumar, the learned Additional Public Prosecutor
appearing for the State and Mr. Manoj Kumar, learned counsel
appearing for the informant.

The petitioner is in custody since 27.11.2018. The
petitioner before this Court is one of the accused in Piro P.S. Case
No. 199 of 2018 registered under Sections 147, 148, 149, 379 and
302/34 of the Indian Penal Code and 27 of the Arms Act.

Learned Senior Counsel appearing on behalf of the
petitioner submits that the petitioner, along with other persons, is
said to have conspired with each other for the killing of the brother
of the informant, namely, Nagesh Pandey, who is the full brother of
the present informant, namely, Shailesh Kumar Pandey. Learned
counsel for the petitioner submits that the prosecution case, as



narrated by the informant, is that the brother of the petitioner had gone to the house of one Adalat Rai on 07.06.2018 at 12.00 p.m. in his Alto K10 car at village Jasidih and, thereafter, from the house of said Adalat Rai, after receiving a phone call from certain person, proceeded to the house of one Chhotan Rai for the purposes of purchasing a cow. It is, further, narrated that around 06.30 p.m. in the evening the brother of the petitioner came away from the house of Chhotan Ram back to the house of Adalat Rai and, thereafter, at 06.30 p.m. proceeded from his house and after covering a distance of 15 minutes, as soon as the said Nagesh Pandey came out of Jasidih-Siwan near the well of one Kesho Rai where the road is said to be in a bad condition, suddenly, the informant, who is said to be following the deceased, Nagesh Pandey, along with his cousin brother, Deepak Pandey, saw that one Harshit Kumar, son of Manoj Kumar Singh of village Sikraul, P.S. Sikarhatta, District Bhojpur, who had a pistol in his hand started firing indiscriminately, which hit the right hand as well as right occipital region behind the ear of said Nagesh Pandey. As a result thereof the car went towards right and came to a stand-still. It has, further, been stated in the first information report that, thereafter, accused Prakash Choudhary, son of Jitendra Choudhary @ Jangli Choudhary, of village Belaur, P.S. Udwantnagar, District Bhojpur, also fired from his pistol, which hit



the head of the brother of the informant. Thereafter, Yogendra Singh (present petitioner), son of Sidhhu of village Sikraul, P.S. Sikrahatta, District Bhojpur, also fired with his pistol, which hit the brother of the informant behind his ear. It is, further, alleged that one Pintu Kumar Pandey, son of Jitendra Pandey, Bindesh Kumar Pandey, Hari Narain Singh, Umesh Pandey, Satyendra Pandey, Dheeraj Kumar, Harkhen Thakur and Pintu Rai all having desi katta (country made pistol) fired from the left side indiscriminately, which resulted in several injuries on various parts of the body. It has, further, been alleged that one Abhishek Singh, who was having a pistol also fired indiscriminately from the left side, which also hit his brother. On such occurrence, having taken place. The informant, along with his cousin brother, Deepak Pandey, started raising *hulla*, as a result whereof the accused persons ran away and other persons from the village gathered there. It is, further, stated in the first information report that there was previous enmity between the informant side as the brother of the informant, Rajesh Pandey @ Barkun Pandey, had been killed earlier by Harshit and other family members. In the said killing, the younger brother of the informant, the deceased, herein, namely, Nagesh Pandey @ Chotkun Pandey, had lodged the first information report. It has also been stated that after the killing of his brother, the mobile



phone of deceased was taken away by the said Harshit. At the narration made on the afore-mentioned first information report, itself, it shows that the present petitioner is facing trial.

Learned counsel appearing on behalf of the petitioner submits that though there has been a graphic description of the occurrence in the first information report itself, it is not known as to how and at what point of time the informant surfaced and started following the deceased during the entire occurrence. Learned counsel has, further, pointed out that the occurrence is of 07.06.2018 at 06.30 p.m., the inquest has been made at 20.20 p.m. on 07.06.2018 itself followed by postmortem at 06.45 a.m. on 08.06.2018. However, the first information report of the present case has been filed belatedly at 02.30 p.m. on 08.06.2018 for which no plausible explanation has been offered by the informant in his first information report. It is also submitted by the Senior Counsel appearing on behalf of the petitioner that this very informant was a witness/signatory to the inquest, therefore, there arose no occasion as to why the first information report was lodged after so many hours. It is also pointed out by learned counsel that though the first information report is said to have been registered on 08.06.2018 at 02.30 p.m., the matter has been forwarded to the Court on 11.06.2018 which is yet another anomaly, raising a serious cloud on



the prosecution story.

Learned counsel for the petitioner has, further, drawn the attention of this Court to the postmortem report, which clearly indicates that there is only one gun shot injury behind the ear of the petitioner as there is only one wound of entry and corresponding wound of exit and there is another wound on the head, which does not co-relates to the prosecution story enumerated in the description given by the informant. He, thus, submits that second wound can not be attributed to the present petitioner as, admittedly, behind the ear first gun shot was allegedly made by the first accused Harshit.

Learned Senior Counsel has also shown from the inquest that though such wounds have indeed been found in several parts of the body, these wounds are not attributed to the present petitioner. Learned counsel for the petitioner, further, submits that so far as the deceased is concerned, he was himself involved as an accused in Piro P.S. Case No. 37 of 2017 lodged by one Prakash Kumar Singh, in which the deceased, along with said Deepak Pandey, was an accused and in another case bearing Piro P.S. Case No. 395 of 2011. So far as the present petitioner is concerned, his implication in connection with the present case is also doubtful and stands from previous enmity and vendetta only because he is associated with the family of the accused persons.



Apart from the technicalities of the delay in filing the first information report and also sending it up to the Court below, which indicates deliberations on the part of the prosecution before filing of the case, learned counsel submits that there is a serious doubt regarding the presence of the present informant at the time of occurrence as other witnesses have not corroborated the said story and it appears that he also reached at the place of occurrence after the firing and has deliberately made up story implicating all accused persons. He, thus, submits that the informant is not likely to be the eye witness as is claimed by him, which also is doubtful for the reason that the main person, who is stated by him to be another co-eye witness, namely, Deepak Kumar Pandey, has not been examined by the police during the investigation.

Raising such contention learned Senior Counsel submits that the petitioner may be extended the privilege of bail as he has already been in custody for about eleven months and is a man of clean antecedent.

The diary in the present case was called for which has since been received. Before averting to the paragraphs of the case diary, it is important to indicate that the informant of the present case has appeared through counsel, Mr. Manoj Kumar, who has seriously contested the matter and has pointed to several statements



in the FIR itself, which, according to him are clearly indicative, of the presence of the present informant in the entire occurrence and he could thus narrate the sequence of events, which led to the murder of the deceased, Nagesh Pandey. He submits that since the petitioner was one of the assailants, he is not entitled to the privilege of bail.

Learned counsel for the petitioner has submitted that not only the presence of the informant at the place of occurrence is clear from his own statement that he was following the deceased, who was travelling ahead in the Alto K10 car has been clearly stated by him in the first information report, but also, further, submits that there are several witness in the case diary who have supported the presence of the present informant at the place of occurrence. Learned counsel, further, submits and refers of one Adalat Rai, who has stated that the informant was there at the time of occurrence when his brother, Nagesh Pandey, was killed by the accused persons.

Learned counsel for the informant has pointed to the statement made in paragraph 11 of the case diary wherein it has been stated that at 06.30 p.m., the deceased had proceeded from the house of Chhotan Rai to come back. This statement, however, indicates that the informant in his statement in the first information



report has not given the correct picture for the reason that in the first information report it has been clearly stated that after going to the house of Chhotan Rai his brother had returned back to the house of Adalat Rai. This, itself, is contrary as in para 11 Adalat Rai stated that deceased has not returned to the house of Adalat Rai. If the entire statement is to be taken to be correct, then in that event, that part of the narration in the first information report by the informant stands contradicted.

With regard to the presence of the informant at the place of occurrence, learned counsel appearing for the informant also submits that the statement of Chhotan Rai is also indicative of the same that the informant was present when he had reached at the place of occurrence on hearing *hulla*.

In this statement also Chhotan Rai has not stated that the deceased had gone back to the house of Adalat Rai and, therefore, his two statements as made by the informant in the FIR also stands contradicted.

Though, it has been asserted by the learned counsel for the informant by referring to such paragraphs of the case diary, that the informant was following his brother it does not appear conclusively that the informant was in fact following the deceased on his motorcycle when the alleged act of indiscriminate firing by



the accused persons took place. Learned counsel also pointed out to paragraph 29 of the case diary and statement of Ramhulas Upadhaya, but, his presence at the place of occurrence to support the presence of the informant is only to the extent that when he reached there, the informant was also present.

Learned counsel appearing for the State has also pointed out to several paragraphs of the case diary and submitted that the delay in lodging the first information report does not stand explained in any way as the inquest has taken place in the night itself and the informant had failed to name the accused persons at that point of time and had also not done so soon after the postmortem was conducted, but, came-up with the story naming several accused persons only in the late afternoon. The learned counsel for the State has also not found any reason to explain as to why the matter was sent-up to the Court after four days, which is a serious lacunae.

Having heard learned counsel for the petitioner, learned counsel for the State and the learned counsel for the informant, I find that there is a definite cloud in the prosecution story. The presence of the informant of the present case is also questionable as it does not stand supported by any statement made by the witnesses in the diary rather all the witnesses on whose statements the learned



counsel for the informant has based his submissions, have merely stated that when they reached there, the informant was present. So far as the narration that the informant was following the deceased on his motorcycle is concerned, that does not stand corroborated by any of the witnesses and the statement of the other eye witnesses having not been recorded is also suspicious in the present context. There was nothing to preclude the recording of the statement of the other co-eye witnesses, which stand unexplained by the prosecution.

Having dealt in depth with all the circumstances that have come before this Court, I find that the petitioner who is not having any criminal antecedent be extended the privilege of bail

It is, accordingly, directed that the petitioner, above named, be released on bail on furnishing bail bond of Rs.10,000/- (rupees ten thousand) with two sureties of the like amount each in connection with Piro P.S. Case No. 199 of 2018 to the satisfaction of the learned Additional Chief Judicial Magistrate, Bhojpur at Ara, or the successor Court, subject to the following conditions :

(1) One of the bailors will be his own blood relative, preferably, father, mother, son, brother, sister and/or his wife.

(2) The petitioner shall not indulge himself in any similar offence till conclusion of the trial.



(3) The petitioner shall remain physically present in court on each and every date during trial and in the event of his failure on two consecutive dates without sufficient reasons, his bail bonds shall be liable to be cancelled by the learned court concerned.

(4) The petitioner shall co-operate with the investigation, if not already concluded, and make himself available as and when so required and in case of failure, the State shall be at liberty to move for cancellation of bail.

(Anjana Mishra, J)

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