

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.72383 of 2018

Arising Out of PS. Case No.-228 Year-2017 Thana- GRIYAK District- Nalanda

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Dilip Chaudhary Son of Kuldeep Choudhary Resident of Village Thakur
Bigha, P.S. Giryak District Nalanda.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Arvind Kumar Singh
For the Opposite Party/s : Smt. Meena Singh

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

9 20-09-2019 Heard learned counsel for the petitioner and learned

Additional Public Prosecutor for the State. Learned counsel for

the Informant is also present.

The petitioner seeks to renew his prayer for bail
which was earlier rejected by this Court vide order dated
12.07.2018 passed in Cr. Misc. No. 31768 of 2018.

The new ground which has been urged by the
petitioner is that though the charge has been framed wayback in
September, 2018, not a single witness has been examined till
date and the prosecution is adopting dilatory tactics resulting in
delay in conclusion of the trial.

Learned counsel for the petitioner submits that
under the mistaken impression that the petitioner was the main
person to have attacked the deceased, the prayer for bail was



rejected earlier without consideration of the case diary.

Recapitulating the grounds for his prayer for bail, learned counsel for the petitioner submits that the F.I.R. in the present case was filed after a delay of 13 days for which no plausible explanation has been offered by the informant. The petitioner's further case is that as per the F.I.R., the allegation is that three persons which also included the petitioner attacked the boy which resulted in his death at the P.M.C.H. after 13 days where he was taking treatment. Learned counsel for the petitioner further submits the the story as carved out in the F.I.R. is sought to be supplemented in the further investigation made by the police in the case diary as though earlier there was no specific allegation that the petitioner was one who had alone attacked. Subsequently, other witnesses have been brought forth and in their statement, they have named the present petitioner as having mainly attacked the deceased boy on the head leading to his death. He thus submits that as time has passed the prosecution has tried to improve upon the case saddle the sole blame on the present petitioner which is not the correct position.

Learned counsel for the petitioner further submits that there was no premeditation in the scuffle which took place and the altercation which had ensued on the date of occurrence



was on account of merely tying of cattle on the way which was being used by the petitioner. He thus submits that there was no intention to kill and the entire injuries which was sustained by the deceased boy was on account of the scuffle which ensued following the verbal duel between the parties. He thus submits that in view of the fact that the petitioner has got no criminal antecedent and there being no plausible explanation for the delay in filing the F.I.R., the petitioner may be extended the privilege of bail as he has already been in jail for more than 1 ½ years. He further submits that the petitioner undertakes to co-operate in the trial and shall be present on each and every date as and when required by the Court and shall not in any prejudice the course of the trial by his absent.

Learned counsel appearing on behalf of the informant has, however, strongly resisted the application for bail and has submitted that in the case diary some eye-witnesses have narrated the incident and the petitioner has been alleged to be the main person to have assaulted the deceased boy. It has been further submitted that the petitioner does not deserve benefit of bail as he has taken an active role in scuffle which has led to the death. He, however, submits that no explanation for the delay that was occasioned in lodging the F.I.R.



Learned counsel for the State after perusal of the case diary submits that in paragraph No. 5 and 31, some witnesses have stated about the involvement of the petitioner, but in the F.I.R., these persons have not been named as having been present at the place of occurrence on the alleged date.

Considering the entire gamut of circumstances and that there is a distinct cloud on the prosecution story and also because the petitioner has no criminal antecedent, let the petitioner above named be released on bail, on furnishing bail bonds of Rs.10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate 6th, Nalanda at Bihar Sharif, in connection with Giriyak P.S. Case No. 228/2017, subject to the following conditions:-

(1) One of the bailors will be the father of the petitioner.

(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 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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