

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.71319 of 2018

Arising Out of PS. Case No.-85 Year-2017 Thana- KHUSRUPUR District- Patna

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Brij Raj Kumar @ Brij Raj Gope, Son of Late Lal Das, Resident of Village-
Khirodharpur, P.S.- Khusrupur, District- Patna.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mrs.Babita Kumari

For the Opposite Party/s : Mr.Sri Pranav Kumar

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 31-01-2019 Heard learned counsel for the petitioner and learned
APP for the State.

The petitioner is languishing in custody since
23.03.2018 in a case registered for the offences punishable
under Sections 302, 120B of the Indian Penal Code and Section
27 of the Arms Act.

The prosecution case as per the written report of
Poonam Devi submitted to the Station House Officer of
Khusrupur Police Station is to the effect that on 10.08.2017
dated 6.00 P.M., when the informant was sitting at her door
along with her husband, Shyam Ved and the mother-in-law, in
the meantime, co-accused Uday Gope (non-petitioner), Sunil
Kumar (non-petitioner) and the petitioner, Brijraj Gope came
and requested the husband of the informant to come along with



them. The informant forbad her husband to go to their house but on their request, the husband of the informant went in their company. After half an hour when the husband of the informant did not return then the informant went near the bank and found co-accused Vishal Kumar, Uday Kumar and Anand Sagar have a hot exchange with the husband of the informant and they were abusing him, in the meantime, co-accused Uday Kumar and Sagar Anand and the petitioner fired at the husband of the informant. It is also alleged that Anand Sagar, Uday Gope, Sunil Kumar, Murari Gope, Nagina Rai and Govind Kumar were also present at the place of occurrence.

It is submitted by learned counsel for the petitioner that for the occurrence of 10.05.2017 at 6.00 P.M. the FIR was registered on 10.05.2017 at 11.45 P.M. when the inquest report was prepared on 10.05.2017 at 9.30 P.M. which clouds the bonafide of the accusation. From the CCTV footage of the bank (place of occurrence) it transpired that the victim was in the company of Uday and Phutush and they only fired upon the victim. It is further submitted that paragraph 83 of the case diary reflects that the CCTV footage was shown to the informant and her family members, who also identified the assailants as Uday and Phutush. Paragraph 29 of the case diary contains the



postmortem report which suggests two wound of entry caused by firearm. In paragraph 9 of the case diary, statement of one Niranjana Kumar was recorded, who also suggested that the firing was made by Uday and Sunil. Hence, the CCTV footage clearly suggests that the firing was not made by the petitioner and the fact that the informant is not the eye witness to the occurrence. A statement has been made in paragraph 3 of the petitioner that the petitioner is not having any criminal antecedent.

Learned counsel for the informant submits that there is specific case of the informant that the petitioner, Uday and Sunil took the husband of the informant in their company, half an hour prior to the occurrence and the informant is an eye witness to the occurrence. The CCTV footage coverage is not very clear and visible since the occurrence took place after the sunset.

Learned APP after going through the case diary submits that in paragraph 74 of the case diary, the confession of co-accused Uday has been recorded where he has stated that in fact, they were taking and planning to kill one notorious criminal Shailendra @ Chhote which was heard by the husband of the informant and hence, they first killed the husband of the



informant. However, co-accused Uday accepted that he and Phutush fired at the victim.

Considering the rival submissions of the parties, the preparation of the inquest report prior to the registration of the case, the fact that the CCTV footage does not suggest the complicity of the petitioner, so far as firing is concerned nor the presence of the petitioner at the place of assault, the fact that from CCTV footage, the informant and her family members have identified Uday and Phutush, which is also being corroborated by the confession of the Uday, who also does not suggest that the petitioner is one of the assailants and the fact that the investigation has already been concluded, coupled with the statement made in paragraph 3 of the petition that the petitioner is not having any criminal antecedent, let the above named petitioner be released on bail, on furnishing bail bond of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate, Patna City in connection with Khusrupur P.S. Case No. 85 of 2017.

(Dinesh Kumar Singh, J)

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