

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.79542 of 2018

Arising Out of PS. Case No.-125 Year-2017 Thana- GOPALPUR District- Bhagalpur

Santosh Sharma Son of Late Sudhir Sharma resident of Village - Gopalpur,
Police Station- Gopalpur, Distt.- Bhagalpur

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Brajesh Kumar Singh, Advocate

For the Opposite Party/s : Dr. Indihar Kumari, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

4 15-04-2019 Heard learned counsel for the petitioner,

learned counsel for the informant and learned

Additional Public Prosecutor for the State.

The petitioner is languishing in custody for the

offences punishable under Sections 302/120B/34 of the

Indian Penal Code.

According to FIR, the informant claims to be

the eyewitness of the occurrence of murder of his

brother. Allegation is that four persons including the

petitioner followed the deceased Vinay Kunwar, who

was going on a motorcycle. Initially co-accused Jitendra



Kumar Gautam fired two shots at the deceased and thereafter all including the petitioner fired at the deceased. The doctor has found four wound of entry two of them at the vital part i.e., chest and abdomen.

Submission of the learned counsel for the petitioner is that the petitioner is in custody since 03.07.2017. Though the informant claims to be an eyewitness of the occurrence but the case-diary would reveal that initially the police got information of commission of fire-arm injury to a person at 7:15 AM on 15.06.2017. The police reached at the place of occurrence at 7:30 AM and para-2 of the case-diary would reveal that after arrival of the police the family members of the deceased reached thereat. Para-2 further discloses that the deceased disclosed before Assistant Sub-Inspector, Akhilesh Kumar Ray regarding name of his assailants which included the name of the petitioner.

Submission is that in view of the statement of



the police, recorded in the case-diary, the informant does not appear to be the eyewitness of the occurrence nor the claim of the informant that the deceased disclosed the name of the assailants is acceptable considering the nature of injury caused to the deceased, which must have caused profused bleeding and deceased must not have seen in a condition to make statement because as soon as he reached Hospital he was declared dead by the doctor.

Learned counsel for the informant opposed the prayer for bail on the basis of aforesaid material as well as on the ground that similarly situated co-accused Bimlendu Kumar @ Bimlendu had already been refused bail by a coordinate Bench of this Court in Cr. Misc. No.68714 of 2018.

Perusal of the order dated 19.12.2018 passed in criminal miscellaneous aforesaid would reveal that this fact was not brought to the notice of the Bench that the case-diary apparently suggests that first the



police had reached near the body of the victim and thereafter the family members had come there. If the informant would have been present at the time of occurrence he must have disclosed the name of the assailants to the police.

Considering the aforesaid doubtful circumstance, let the petitioner, above named, be released on bail on furnishing bail bond of Rs.20,000/- (Twenty Thousand) with two sureties of the like amount each to the satisfaction of the learned Court-below where the case is pending in connection with Gopalpur P.S. Case No.125 of 2017, with condition that petitioner shall fully cooperate with the trial of the case, failing which the court below shall be at liberty to cancel the bail bond of the petitioner.

(Birendra Kumar, J)

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