

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.61148 of 2019

Arising Out of PS. Case No.-151 Year-2019 Thana- NOORSARAI District- Nalanda

1. Tuntun Gope, Son of Sadhu Gope, Resident of Village-Lakhichak, P.S.-Noorsarai, District-Nalanda.
2. Shankar Gope @ Shiv Shankar Gope, Son of Late Fakira Gope, Resident of Village-Lakhichak, P.S.-Noorsarai, District-Nalanda.
3. Ranjeet Gope @ Ranjeet Yadav @ Ajit Gope, Son of Shankar Gope @ Shiv Shankar Gope, Resident of Village-Lakhichak, P.S.-Noorsarai, District-Nalanda.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioners	:	Mr. Ajay Kumar Thakur, Advocate Ms. Babita Kumari, Advocate Mr. Nilesch Kumar, Advocate
For the State	:	Mr. Umesh Lal Verma, Advocate
For the Informant	:	Mr. Sudish Kumar, Advocate

CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

3 14-11-2019 Heard learned counsel for the petitioners and the learned counsel appearing on behalf of the State. Learned counsel for the informant is also present.

The petitioner Nos.1, 2 and 3 are in custody since 09.07.2019, 18.06.2019 and 17.06.2019, respectively, in connection with Noorsarai P.S. Case No.151 of 2019 registered for the offence under Sections 147, 148, 149, 341, 302, 427, 504 of the Indian Penal Code and Section 27 of the Arms Act.

Learned counsel for the petitioners submits that the



allegation against these petitioners is that they had together attacked the house of the informant and had damaged the wall which has been built by his grandfather. It is further submitted that subsequent thereto, the police had come to the spot and had tried to create peace between the parties but thereafter, the accused persons caught hold of the brother of the informant and one Suresh Gope took out a pistol from his waist and fired at the eye of the brother of the informant who was going to take a bath, which resulted in his immediate death.

Learned counsel for the petitioners submits that the narration of the F.I.R. is such which leads to the impression that the deceased was fired at from the front and that these persons have facilitated the occurrence by catching hold of the deceased but specific names of the present petitioners have not been taken by the informant. It is further submitted that even the post-mortem report belies the prosecution story as there is only one wound of entry which is from behind and one wound of exit has been described to be on the eye which as per the narration in the F.I.R. is otherwise. Learned counsel for the petitioners thus submits that in view of the medical report, the entire narration of the prosecution story comes



under a cloud and therefore, the petitioners are entitled to the privilege of bail. He further submits that in any view of the matter, the role of the present petitioners can only be said to be as members of the crowd as it has not been clearly stated as to who has caught hold of the deceased when the alleged act of shooting took place.

Learned counsel appearing on behalf of the informant, however, submits that these petitioners do not deserve the privilege of bail as they have the criminal antecedents. It is further submitted by the learned counsel for the informant that apart from that, it has been stated in the main bail petition that Petitioner Nos.2 and 3 have one more criminal antecedent which has been cleverly concealed by the petitioners.

In response to the above, learned counsel for the petitioners has brought on record the other antecedents by way of supplementary affidavit. It appears from the supplementary affidavit that, in fact, one Noorsarai P.S. Case No.336 of 2018 for the offence under Sections 147, 149, 341, 323, 504, 354B and 379 I.P.C. was also lodged by the same prosecution party in which the petitioners have already been extended the privilege of bail. Learned counsel for the



petitioners submits that the said case was not known to the *Pairvikar* of the petitioners and therefore, there was no intentional concealment of the same.

In the counter affidavit filed before this Court, learned counsel for the informant has also brought on record the very same case number, which indicates the implication of Shankar Gope and Ranjeet Gope, petitioner No.2 and 3 of the present bail application. So far as petitioner No.1 is concerned, he has no criminal antecedents.

Having heard learned counsel for the petitioners and the learned counsel for the informant and also the learned counsel for the State and the first supplementary affidavit by which the post-mortem report has been brought on record, it appears that there is only one wound of entry over back of head with blackening of scalp region, which has been indicated as a wound of entry. It also appears from the post-mortem report that the lacerated wound over right eye region near the nose has been described as the wound of exit. Thus, learned counsel for the petitioners submits that the story of the petitioners having been shot at in the right eye does not stand substantiated by the medical report.

Having heard learned counsel for the petitioners



and the learned counsel for the informant as well as the learned counsel for the State, it appears that the only role which has been assigned to the petitioners is of having caught hold of the deceased in the entire occurrence, but the informant has not specifically named as to who had caught hold of the deceased when the act of shooting took place.

In view of the aforementioned facts and circumstances, let all the three petitioners, above named, be released on bail on their furnishing bail bonds of Rs.10,000/- (Ten thousand) each with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Nalanda at Biharsharif, in connection with Noorsarai P.S. Case No.151 of 2019, subject to the following conditions:

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

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

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



learned court concerned.

(4) The petitioners shall co-operate with the investigation, if not already concluded, and make themselves 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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