

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.6171 of 2020**

Arising Out of PS. Case No.-165 Year-2016 Thana- NAYA RAM NAGAR District- Munger

MANISH YADAV @ MANISH KUMAR Son of Sikandar Yadav Resident of
Village - Farda (Purbi Tola), P.S.- Naya Ram Nagar, Distt - Munger.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Sanjeeb Kumar Sanju, Advocate

For the Opposite Party/s : Mr.Shyameshwar Dayal, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

4 09-06-2020 This application has been placed for consideration by

the order of the Hon'ble the Chief Justice through virtual court

proceeding.

Heard learned counsel for the petitioner and learned

APP for the State.

The petitioner in the present case is seeking regular bail

in connection with Naya Ram Nagar P.S. Case No. 165 of 2016

registered for the offences punishable under Sections 302, 307/34

of the Indian Penal Code and Section 27 of the Arms Act.

Learned counsel for the petitioner submits that as per

the first information report the informant was sleeping with his

father Devan Yadav @ Dev Narayan Yadav and younger brother

Chotu Kumar in a hut situated at Dakra Bandh on 10.11.2016 at

about 10:00 p.m. It is alleged that the informant was sleeping at a

distance of 20 feet, he heard a sound of firing whereupon he saw



that three persons were going on NH 80 Road after firing at his father and the younger brother. The informant also saw that on the road near a Peepal tree three persons were waiting on motorcycles and as soon as these three persons reached there, all the six persons fled away towards western side on the motorcycles. The informant specifically stated in his fardbeyan that because of the darkness he could not identify anybody. The FIR was thus, lodged against unknown persons.

Learned counsel for the petitioner submits that in course of investigation name of this petitioner and co-accused Sikandar and Murari were brought as the assailants. It is submitted that though the statement of the injured Chotu was taken earlier also which fact has come in the supervision note in the paragraph '22' of the case diary, he did not disclose the name of this petitioner at that time but later on the investigating officer is said to have recorded the statement of Chotu in PMCH where he has come out with a story that in a mobile light he had identified the assailant and according to him while this petitioner had shot at his father, the co-accused Murari had shot at him. Thus, at this stage, the name of the petitioner has been brought as an assailant.

Learned counsel further submits that the whole story involving the petitioner has been cooked up saying that the injured Chotu has identified this petitioner in a mobile light but the



apparent falsity of the said statement may be seen from the fact that no mobile was seized from the place of occurrence and further in course of investigation when the Police reached at the house of the informant one mobile bearing no. 9939759113 was handed over to Police. The said mobile number is said to be that of the deceased but the said mobile number belongs to one co-villager and the CDR details of the mobile which has been taken out by the Investigating Officer shows that the said mobile was at the distance of 4 kilometer in Adampur and Maksadpur area during 10.11.2016 at 10:00 p.m. onwards.

It is thus, the submission of learned counsel for the petitioner that even though the name of the petitioner has been taken by the injured belatedly, it is nothing but a mere concoction and the very basis of identification through a mobile phone is not even prima facie sustainable.

Learned counsel further submits that although this petitioner was earlier made accused in two cases but he had been acquitted in both the cases and no case was lodged against this petitioner after the year 2016. The petitioner has otherwise no criminal antecedent and there is no other material to connect the petitioner in the present case.

Learned APP for the State has opposed the prayer for regular bail of the petitioner. Learned APP has read out the



statements made in paragraphs 22, 50, 77, 78 and 79 of the case diary. On query made by this Court learned APP admits that there was no seizure of any mobile from the place of occurrence and on reading the relevant paragraph of the case diary it is further submitted that the location of the mobile number which was provided to the I. O. in course of investigation by the informant at a belated stage is showing at a different location.

Having heard learned counsel for the petitioner and learned APP for the State as also on perusal of the materials available on the records, this Court has noticed that the informant who was sleeping near the deceased and the injured has specifically stated that because of the darkness in the night hours he could not identify the assailants. The Police did not seize any mobile from possession of the deceased and injured or from the informant while recording the fardbeyan. It is only at a belated stage when the statement of the injured was recorded in PMCH he claimed that in a mobile light he identified the petitioner and the co-accused Murari. Police did not find any mobile from the injured but from the house of the informant he was provided a mobile number and location of which was found in the area Adampur and Maksadpur during the period occurrence took place. The co-accused Murari Yadav has already been granted regular bail by a learned co-ordinate Bench of this Court in Cr. Misc. No. 25830 of



2018, the petitioner has remained in custody for nine months, investigation against him is complete and there is no submission on behalf of the State that the release of the petitioner at this stage is in any way likely to adversely affect the course of trial or there is any chance of tampering with the evidence, in such circumstances, let the petitioner above named be released on bail in connection with Naya Ram Nagar P.S. Case No. 165 of 2016 on furnishing of bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction learned Additional Chief Judicial Magistrate -I, Munger, subject to the conditions as laid down under Section 437(3) of the Cr.P.C. as under:

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, or the commission of which he is suspected, and

(c) that such person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

And further condition that he will abide by and observe



the guidelines and directives of the Government of India and the State Government with regard to COVID-19 Pandemic during the lockdown period. The authorities concerned shall take appropriate steps to ensure such observance prior to and after release of the petitioner.

This application stands allowed.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

