

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8077 of 2020

Arising Out of PS. Case No.-203 Year-2019 Thana- SALAKHUA District- Saharsa

1. BHEMESHWAR PRASAD @ RAMESH PRASAD @ BHUMESHWAR PRASAD @ RAMESH YADAV S/o Baiju Prasad @ Baijnath Prasad Resident of Village- Mundichak, P.S.- Salkhua, Distt- Saharsa.
2. Pappu Yadav S/o Bindeshwari Yadav @ Vindeshwari Yadav Resident of Village- Parasaha, P.S.- Salkhua, Distt- Saharsa.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Umesh Chandra Verma
For the Opposite Party/s : Mr.Md. Ataur Rahman

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

4 19-06-2020 The present case was heard on 18.06.2020 and today the case was fixed for orders.

The petitioner apprehends his arrest in connection with Salkhua P.S. Case No. 203 of 2019 of 2019, for the offence punishable under Section 302 and other allied sections of the Indian Penal Code and section 27 of the Arms Act. .

The case of the prosecution in brief is that on 01.09.2019 at about 4.30 P.M. the informant's son namely Kamlesh Yadav and his villager Lallan Yadav were going to market, while the accused persons including the petitioners herein had surrounded them, whereafter the co-accused person namely Bijendra Yadav gave orders to the petitioners to kill Kamlesh Yadav and Lallan Yadav. Subsequently, other accused



persons had also reached there and co-accused Dinesh Yadav and Uday Yadav had caught hold the hands of Kamlesh Yadav, whereafter the co-accused persons namely Ramesh Yadav, Guddu Yadav, Abeen Yadav and Jai Chadra Yadav fired gun shot on Kamlesh Yadav. It is further alleged that the other 22 co-accused persons variously armed had killed the deceased person by shooting him.

The learned counsel for the petitioner has submitted that the petitioner is innocent, has been falsely implicated in the present case and is having a clean antecedent. It is further submitted that the independent witnesses have not supported the story as propounded by the prosecution party. It is further submitted that the deceased was a dreaded criminal and the fact is that he has been killed in an encounter with the police and the petitioner and others have been falsely implicated in the present case on account of the prevailing land dispute for which one Title suit is also pending. In this regard, it is submitted that the police has also filed an FIR bearing Sanakhua P.S. Case No. 204 of 2019 on the same day i.e. 1.9.2019 against the deceased Kamlesh Yadav and Lallan Yadav under the Arms Act. It is also the submission of the learned counsel for the petitioner that it is apparent from the FIR itself that the accused persons have



jointly killed Kamlesh Yadav and Lallan Yadav by firing gun shot on them. However, no specific overt act has been alleged which shows that the petitioner is not an eye witness. Lastly, it is submitted that the petitioner is a Shiksha Mitra and having a clean antecedent, thus benefit of doubt should be extended to him, as such he should be granted the privilege of anticipatory bail.

The learned A.P.P. appearing for the State has vehemently opposed the prayer for anticipatory bail. The learned counsel for the informant has also vehemently opposed the prayer for bail and has submitted that the accused persons have been alleged to have killed the two persons by means of gun shot firing, hence, the petitioners do not deserve to be extended the privilege of anticipatory bail.

Having regard to the facts and circumstances of the case and considering the submissions made by the learned counsel for the parties as also taking into account the materials available in the case diary, it is apparent, especially from paragraphs no. 77 and 78 that the independent witnesses have stated about the accused persons having eating food at a feast organized in the village when sound of firing was heard and subsequently they came to know that the co-villagers Kamlesh Yadav and Lallan Yadav have died of gun shot injury and the police



has taken away the dead bodies, hence the complicity of the petitioner, prima facie, does not appear to be present in the matter. This Court, prima facie, finds that there is no conclusive proof which has been found during the course of investigation to suggest that the petitioner is perpetrator of alleged crime, hence this Court deems it fit and proper that the benefit of doubt should be extended to the petitioner No.1 for the purposes of consideration of his case for grant of anticipatory bail, hence, I deem it fit and proper to admit the petitioner No. 1 to the privilege of anticipatory bail.

Accordingly, in the event of arrest or surrender before the learned court below within a period of four weeks from today, the petitioner No.1, above-named, shall be released on anticipatory bail on furnishing bail-bonds of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of learned A.C.J.M.-IV, Saharsa in connection with Salkhua P.S. Case No. 203 of 2019, subject to the conditions as laid down under Section 438(2) Cr. P.C.

(Mohit Kumar Shah, J)

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