

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL APPEAL (SJ) No.617 of 2020**

Arising Out of PS. Case No.-331 Year-2019 Thana- CHAUSA District- Madhepura

Md. Shamim @ Shekh Shamim @ Sekh Samim @ Sheikh Samiuddin Son of
Late Md. Makbul @ Sheikh Makbool Hussain Resident of Village - Paina,
P.S.- Chausa, District- Madhepura

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr.Viveka Nandsingh, Advocate
For the Respondent/s : Mr.Sadanand Paswan, Spl. P.P

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

3 27-05-2020 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 Mr.
Sadnanand Paswan, learned Special P.P. representing the State.

Learned Spl. PP has been heard over telephone as he
was facing some technical glitch in connecting through video
conferencing.

This application has been preferred for setting aside
the order dated 28.01.2020 passed by learned 1st Additional
Sessions Judge-cum-Special Judge, Madhepura in S.C./S.T.
Case No. 248 of 2019 arising out of Chausa P.S. Case No. 331
of 2019 registered for the offences punishable under Sections
302/34 of the Indian Penal Code, Section 27 of the Arms Act



and Sections 3(2)(v) SC/ST (Prevention of Atrocities) Act.

Learned counsel for the petitioner has taken this Court through the allegations made in the First Information Report according to which the informant identified three persons including this petitioner who came to the door of the informant and fired from their arms which were of small sizes in their possession.

It is submitted on behalf of the petitioner that in the First Information Report there is no specific allegation that who fired on which part of the body of the deceased. Learned counsel has drawn the attention of this Court towards Annexure-2 which is a copy of the Aadhar Card of the petitioner showing that he is more than 80 years old as on today the date of birth being 01.01.1940. It is submitted that he is a retired school teacher and has been falsely implicated in this case because he had a land dispute with the family of the informant.

Learned counsel has then drawn the attention of this Court towards the post mortem report which has been discussed in Report-3 of the Superintendent of Police, Madhepura as contained in Annexure '76' of the case diary. In the Supervision it has come that according to the Doctor who conducted the post mortem on the dead body, two entry and two exit wounds



were found which show that two shots were fired on the deceased.

Learned counsel submits that the post mortem report does not substantiate the allegations made in the F.I.R. saying that three persons had fired on the deceased. In the supervision note also it has come that this petitioner is 80 years old and the involvement of the petitioner as alleged is required to be investigated from different angles.

Learned Special P.P. for the State has though opposed the prayer of regular bail of the petitioner who is behind the bar since 07.12.2019, however it is not denied that in supervision note what has been stated with respect to the post mortem report that only two entry and exit wounds were found, the same does not substantiate the F.I.R.

Considering the facts and circumstances of the case, the submissions of learned counsel for the petitioner as noted hereinabove and the materials which have been discussed as also the kind of discrepancies pointed out at this stage and further that the petitioner is aged about 80 years having no criminal antecedent and the allegations of firing of three shots at the deceased is not substantiated from the post mortem report and there is no submission on behalf of the State that release of



the petitioner at this stage is in any way going to adversely affect the trial and/or interfere with the course of trial by influencing the witnesses, this Court directs that the petitioner above named be released on bail in S.C./S.T. Case No. 248 of 2019 arising out of Chausa P.S. Case No. 331 of 2019 on furnishing of bail bond of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of Shivchand, learned 1st Additional Sessions Judge-cum- Special Judge, Madhepura, subject to the condition as laid down under Section 437 (3) 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, of 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.

(Rajeev Ranjan Prasad, J)

vats/-

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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'.

