

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.11366 of 2020**

Arising Out of PS. Case No.-383 Year-2019 Thana- GAURICHAK District- Patna

ARUN RAI Son of Ram Iqbal Rai R/o- Kamar Jee, P.S.- Gaurichak, District- Patna.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s	:	Mr.Y.C. Verma, Senior Advocate Mr.Ghanshyam Tiwary,Advocate
For the Opposite Party/s :		Mr.Mithlesh Kumar Khare,APP
For the Informant	:	Mr.I.P. Mandal,Advocate

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

9 25-11-2020 Heard Mr. Y.C. Verma, learned Senior counsel for the petitioner, Mr. I.P. Mandal, learned counsel representing the informant and Mr. Mithlesh Kumar Khare, learned APP for the State.

The petitioner in the present case is seeking regular bail in connection with Gaurichak P.S. Case No. 383 of 2019 registered for the offences punishable under Sections 302, 120B/34 of the Indian Penal Code and Section 27 of the Arms Act.

Learned Senior Counsel for the petitioner submits that the informant Suraj Kumar happens to be the son of the deceased. He claims himself an eye-witness to the alleged occurrence which took place on 10.09.2019 at about 08:00 P.M.



in which 8 named accused persons came at the place of occurrence and in front of the informant all of them surrounded the father of the informant and fired upon him, the injured succumbed to his injuries in course of taking him to the hospital for treatment.

Learned Senior Counsel submits that in the First Information Report there is a general and omnibus kind of allegations against 8 persons named therein. After the lodgment of the FIR, police recorded further statement of the informant and that finds place in paragraph '6' of the case diary. In his further statement also the informant reiterated his statements which are the basis of the FIR. No specific allegation was made that this petitioner was one amongst those who had fired.

It is submitted that after recording of the further statement the post mortem report came which was issued on 11.09.2019 showing four injuries on the body of the deceased, thereafter in a peculiar manner third statement of the informant was got recorded which has also come in paragraph '36' of the case diary. This statement has been recorded on 12.09.2019 and at this stage the informant has come out with four specific names saying that these were the persons who had fired on his father.



Learned Senior Counsel submits that the subsequent improvement on the part of the informant after issuance of the post mortem report and when the inquest report had already come on record is nothing but with an intention to implicate the petitioner and others alleging that they had fired. This creates a grave doubt on the statement of the informant and though its credibility and evidenciary value are to be adjudged at the stage of trial, this is a sufficient material to allow privilege of bail to the petitioner.

Learned Senior Counsel for the petitioner submits that one of the co-accused Akhilesh Ray against whom also subsequently allegations were made that he had fired has been granted bail by a learned Co-ordinate Bench of this Court vide order dated 20.02.2020 in Cri. Misc. No. 8044 of 2020. While granting him bail the learned Co-ordinate Bench has taken into consideration two aspects i.e. his age being 70 years and that allegation is general in nature. Learned counsel, thus, submits that the petitioner who is otherwise having no criminal antecedent is in jail in connection with this case since 22.10.2019 and at this stage the trial has not begun and is not likely to begin in near future.

Learned counsel for the informant has opposed the



prayer for regular bail of the petitioner. It is his submission that four injuries have been found on the body of the deceased and, therefore, when the informant had disclosed the 4 names of the persons who had fired upon his father, this petitioner being one of them does not deserve privilege of bail. He has submitted that so far as Akhilesh Ray @ Akhilesh Kumar Singh is concerned, he has been granted bail considering his age being 70 years and though it has been mentioned in the order that the allegation is general in nature, the same is not the reason for grant of bail to Akhilesh Ray. Learned counsel has submitted that subsequently learned Co-ordinate Bench rejected the prayer for regular bail of co-accused Pappu Rai in Cri. Misc. No. 7263 of 2020 after noticing the allegations.

Learned APP for the State has read out the materials in the case diary. He has submitted that the third statement of the informant has come on 12.09.2019 in paragraph '36' of the case diary. He has also stated that in his further statement after lodging of the FIR the informant had not specifically disclosed the 4 names as persons who fired. He has also informed this Court that the post mortem report was issued on 11.09.2019 i.e. on the day preceding the day on which the third statement of the informant was recorded.



Having regard to the facts and circumstances of the case, this Court finds that so far as relevant considerations for grant of bail are concerned, the seriousness of the allegations, severity of punishment and the materials before the Court are the relevant factors to be considered by this Court. In the First Information Report the allegations are that 8 accused persons had surrounded father of the informant and then in presence of the informant his father was shot dead and the miscreants fled away. The informant did not disclose specifically the name of the accused whom he had seen firing on his father, the allegations are general against all the 8 accused and this is what has been noticed by the learned Co-ordinate Bench while granting bail to Akhilesh Ray in Cri. Misc. No. 8044 of 2020. No doubt the age of Akhilesh Ray has also been considered but then the fact that the learned Co-ordinate Bench has taken a view that allegations are general is also apparent in the order dated 20.02.2020.

This Court also finds persuaded itself from the materials such as the further statement of the informant in which also the informant has not specifically named this petitioner as one who had fired upon his father. The Court is inclined to accept the submission of learned Senior Counsel at this stage



that after the inquest report and post mortem report came on 11.09.2019 and the four injuries were found mentioned in those documents, subsequently on the next day the statement of informant was got recorded on a third time which has come in paragraph '36' of the case diary and at this stage four specific names have been disclosed. The kind of materials which this Court has noticed, the Court is inclined to accept the submission of learned Senior Counsel that there is an improvement in the statement of the informant at this stage, therefore, the Court is inclined to grant privilege of regular bail to the petitioner.

Let the petitioner above-named be released on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned A.C.J.M. I, Patna City, Patna in connection with Gaurichak P.S. Case No. 383 of 2019, 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 the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner.

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.

And further condition that he will appear in course of trial on each and every date fixed in the matter and two consecutive defaults in putting appears in course of trial would invite action towards cancellation of his bail.

It is made clear that the observations of the Court are only for purpose of grant of bail.

This application stands disposed of accordingly.

(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'.

