

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.12593 of 2020

Arising Out of PS. Case No.-55 Year-2019 Thana- BUXAR District- Buxar

HIMANSHU DUBEY @ MAHABIR PRASAD DUBEY @ MAHABIR
PRASAD DWIVEDI Son of Nitya Nand Dubey @ Nityanand Dwivedi
Resident of Village - Belahari, P.S.- Sikraul, Distt - Buxar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rajeev Ranjan, Adv.

For the Opposite Party/s : Mr. Brajendra Nath Pandey, APP

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 30-06-2020 Heard learned counsel for the petitioner and learned
APP for the State.

The matter has been taken up through virtual Court
proceeding.

The petitioner has preferred the present application
for grant of bail in a case registered for the offences punishable
under Sections 302/34 of the I.P.C. and Section 27 of the Arms
Act.

The prosecution case got initiated on the Fardbeyan of
Kamal Singh, recorded by Rajesh Kumar Chaudhary, S.I. on
20.01.2019 at 4.10 P.M., is to the effect that on 20.01.2019 at
3.00 P.M., the son of the informant, Rohit Kumar left the house
and went towards the railway crossing. After sometime, the



villagers informed the informant that three motorcycle born miscreants have shot the son of the informant and when the informant reached on the spot, he found his son's dead body on the ground in a pool of blood. Subsequently, the informant raised suspicion against co-accused, Chhote Lal Chauhan who earlier had threatened the son of the informant. As a result, the FIR was lodged only against co-accused, Chhote Lal Chauhan. Subsequently, during investigation, the name of the petitioner sprang up. In the subsequent statement, recorded at paragraph no.4 of the case diary, the informant stated that when he reached at the place of occurrence, he found his son dead and the people present on the spot suggested the name of three persons, co-accused, Jiyut Yadav, Mahendra Yadav and Himanshu Dubey, the petitioner as assailants. Thereafter, the statement of mother of the victim was recorded at paragraph no.20 of the case diary wherein she has stated that when she reached at the place of occurrence, her another son, Rahul suggested the name of three persons, co-accused, Jiyut Yadav, Mahendra Yadav and Himanshu Dubey, the petitioner as assailants. Thereafter, the statement of other son of the informant, Rahul Kumar was recorded at paragraph no.13 of the case diary wherein he has claimed to have seen the occurrence while passing through the



place of occurrence at the relevant time and claimed to have identified three persons, including the petitioner as assailants.

It is submitted by learned counsel for the petitioner that the petitioner is not named in the FIR and admittedly, as per the FIR, the people on the spot did not disclose the name of the accused persons, including the petitioner, but only suggested that three motorcycle borne accused persons have killed the son of the informant, but the FIR has been registered only against co-accused, Chhote Lal Chaudhary. Even assuming this fact to be true, if the people around the place of occurrence had disclosed the name of the three accused persons then there was no occasion for the informant for not disclosing their names in the FIR itself. Moreover, similarly situated co-accused, Mahendra Yadav, has been granted bail by a Co-ordinate bench of this Court vide order dated 17.08.2019 passed in Criminal Miscellaneous No.33392 of 2019. The petitioner is languishing in custody since 21.12.2009 and the investigation has already been concluded. A statement has been made in paragraph no.3 of the petition that the petitioner is accused in one other case, apart from the present case.

Learned APP for the State submits that the name of the petitioner sprang up during course of investigation.



Having heard rivals submissions of the parties, it appears that the specific case of the informant is that when he reached on the spot, he found his son dead and the people present on the place of occurrence did not disclose the specific name of the assailants, hence, but in the subsequent statement, the informant claimed that the people on spot conveyed the name of accused persons, including the name of the petitioner, clouds suspicion of *bona fide* of accusation. The statement of other son of the informant, Rahul Kumar was recorded at paragraph no. 13 of the case diary which suggests that by chance, he reached at the place of occurrence at the relevant time and identified the assailants, then there was no occasion for him for not conveying their names to his father, at the time of lodging of the FIR.

Considering the fact that the inconsistent statements of the family members of the victim *prima facie* appears to be doubtful, the investigation already being concluded, let the petitioner above named be released on bail for the present provisionally for a period of three months on furnishing one surety to the satisfaction of the learned Additional Sessions Judge-I, Buxar, in connection with Buxar Town P.S. Case No. 55 of 2019, corresponding to Sessions Trial No. 141 of 2019.



However, in view of the present pandemic, COVID-19, it will be open for the learned Court below to accept the bail bond on furnishing an undertaking by the surety, on photo copy of his Aadhar Card, to the effect that he is ready to become the bailor of the petitioner which may be transmitted by such surety to the learned Court concerned through e-mode.

The provisional bail of the petitioner will be confirmed by the learned Court below within three months on furnishing bail bond of Rs.10000/- (ten thousand) with two sureties, including one surety given at the time of provisional bail, of the like amount each to the satisfaction of the learned Additional Sessions Judge-I, Buxar, in connection with Buxar Town P.S. Case No. 55 of 2019, corresponding to Sessions Trial No. 141 of 2019.

The learned Court below will be at liberty to extend the period of provisional bail further if the court proceeding in physical mode will not resume in next three months.

(Dinesh Kumar Singh, J)

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