

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20252 of 2020

Arising Out of PS. Case No.-174 Year-2019 Thana- SUPPI District- Sitamarhi

Lal Akhtar Khan S/o Akhtar Khan @ Akhtar Khan @ Chingi Khan Resident
of Village-Akhta, P.S.-Suppi, District-Sitamarhi

... .. Petitioner.

Versus

The State of Bihar

... .. Opposite Party.

Appearance :

For the Petitioner	:	Mr. Aditya Shankar, Advocate Mr. Sanchay Srivastava, Advocate
For the State	:	Mr. Ajay Kumar, APP
For the Informant	:	Mr. Mahendra Thakur, Advocate

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

4 20-08-2020 The Court proceeding has been conducted through
virtual mode.

Heard learned counsel for the petitioner, learned
APP for the State and learned counsel for the informant.

Since the court proceeding in physical mode is
non-functional, due to present pandemic, COVID-19, the matter
is listed with defects.

Learned counsel for the petitioner undertakes to
remove the defects within three weeks of resumption of court
proceeding in physical mode. In the eventuality of non-removal
of defects within undertaken period, the office will place the
matter before the bench.

The petitioner is languishing in custody since
27.08.2019 in a case registered for the offences punishable



under Sections 147, 148, 149, 341, 342, 302, 120B of the Indian Penal Code and Section 27 of the Arms Act, hence, the prayer for bail has been made through the present application.

On the prayer of learned counsel for the petitioner, this Court vide order dated 01.07.2020 directed for placing the matter along with the records of Cr. Misc. No. 4181 of 2020.

It appears that subsequently the prayer was made on behalf of the counsel for the petitioner that since case diary of Suppi P.S. Case No. 174 of 2019 is available in Cr. Misc. No. 4181 of 2020, hence, vide order dated 13.07.2020 office was directed to place the matter on 18.08.2020 along with the case diary. However, the office note dated 07.08.2020 reflects that since the case diary has been returned from the connected matter (Cr. Misc. No. 4181 of 2020), hence, it could not be brought on record. This Court never ordered for calling of the case diary and from the materials available on record, this Court is not inclined to call for the same.

The prosecution case as per the fardbeyan of Md. Asgar Khan recorded by Inspector, Prabhat Ranjan Saxena, S.H.O., Sitamarhi Police Station on 26.08.2019 at 10.10 A.M. at Sadar Hospital, Sitamarhi, is to the effect that on the same day at 8.50 A.M., the informant and Sahid Khan on one motorcycle



and Md. Ezaz Khan and Md. Salman Khan on another motorcycle were going to appear in a case before the court. On the way, one Scorpio vehicle overtook them and dashed the motorcycle driven by Md. Ezaz Khan on which Md. Salman Khan was pillion rider, as a result, they fell down. Thereafter, Md. Gayasuddin Khan and Md. Sahabuddin Khan came on a motorcycle and from the Scorpio vehicle, co-accused Allauddin Khan, Sarfuddin Khan, Lal Akhtar Khan, the petitioner, co-accused Allauddin Khan and other unknown came out and caught hold of Ezaz Khan and Salman Khan and thereafter, Gayasuddin Khan and Sahabuddin Khan took out a pistol and a revolver and shot at Ezaz Khan, thereafter, Allauddin Khan and Sarfuddin Khan shot at Salman Khan, as a result, both of them died on the spot. Thereafter, all the accused persons escaped from the scene while resorting to fire in the air. It is alleged that Allauddin Khan and Sarfuddin Khan dragged out Shahjahan Nisha from her house and killed her. The informant also came to know that Munna Khan, Sonu Khan and others were also involved in the said incident, leading to registration of the present case.

Mr. Aditya Shankar, learned counsel for the petitioner submits that, though, the petitioner is named in the



FIR but there is no accusation of firing against him. Both the informant and the petitioner's side have the common ancestor and in the background of old enmity, the accusation has been levelled against the petitioner. The only accusation against the petitioner while driving a Scorpio vehicle to have dashed the motorcycle being driven by Ezaz Khan on which Salman Khan was pillion rider. Apart from the accusation of dashing no specific accusation of firing or assault has been levelled against him. The investigation has already been concluded. The petitioner is accused in one another case registered under Arms Act. There is a counter version of the occurrence also being Bairgania (Suppi O.P.) P.S. Case No. 222 of 2018 registered for the offences punishable under Sections 147, 148, 149, 325, 323, 324, 307, 120B, 302/34 of the Indian Penal Code and Section 27 of the Arms Act. The other co-accused persons, i.e., Md. Naushad Khan, Sahil Khan, Jallaluddin Khan, Sonu Khan and Sharif Khan have been granted bail by different Co-ordinate benches of this Court vide Cr. Misc. Nos. 4181 of 2020, 8423 of 2020 and 10046 of 2020 respectively. Since the Court proceedings in physical mode are not functioning in the regular manner, hence, there is no likelihood of trial being concluded in near future and the petitioner undertakes to appear regularly



during trial.

Mr. Mahendra Thakur, learned counsel for the informant and the learned counsel for the State vehemently opposed the prayer for bail and submit that the petitioner was sharing common intention, he is named in the FIR and it was the petitioner, who was driving Scorpio vehicle and dashed one of the motorcycles and thereafter, the other co-accused persons resorted to fire. During investigation the other witnesses have also suggested that this petitioner initially dashed one of the motorcycles and this fact has also been confessed by this petitioner during investigation. Moreover, charge has been framed in February, 2020 and two witnesses have already been examined during trial.

Considering the rival submissions of the parties, there is no doubt that the petitioner is named in the FIR but the specific accusation of firing has been levelled against Allauddin Khan, Sarfuddin Khan, Gayasuddin Khan and Sahabuddin Khan which led to death of three persons and there is no accusation of firing not against the petitioner, the investigation has already been concluded, other co-accused persons have been granted bail, moreover, due to the present pandemic, COVID-19, since the court proceedings in physical mode are not functioning regularly, the trial is not likelihood to be concluded in near future, 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 Chief Judicial Magistrate-IV, Sitamarhi in connection with Suppi P.S. Case No. 174 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 upon 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 Chief Judicial Magistrate-IV, Sitamarhi in connection with Suppi P.S. Case No. 174 of 2019

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

However, the learned court below will be at liberty to cancel the bail bonds of the petitioner, if the petitioner gets



substantially involved in some serious nature of offence and defaults for three consecutive occasions during trial.

Accordingly, the application stands disposed of.

(Dinesh Kumar Singh, J)

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