

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18326 of 2020

Arising Out of PS. Case No.-13 Year-2020 Thana- KALYANPUR District- Samastipur

MD. AKHTAR ALI @ AKHTAR RAZA @ MD. FARAQUE @ AKHTAR
RAJA @ MD. FARUK Son of Lt. Md. Hasan Jan @ Lt. Md. Hasan Jaan
Resident of Village- Ratwara, P.S.- Kalyanpur, District- Samastipur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bijay Bhushan Prasad
For the Opposite Party/s : Ms.Anita Kumari Singh

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

8 15-10-2020 The petitioner seeks his release on regular bail in connection with Kalyanpur P.S. Case No. 13 of 2020 registered for the offences punishable under sections 302 read with section 120-B of the Indian Penal Code and section 27 of the Arms Act.

I have heard learned counsel for the petitioner, learned Additional Public Prosecutor for the State and learned counsel representing the informant.

Based on a written application of the informant (who is the son of the deceased), addressed to the Station House Officer on 15. 01. 2020, concerning an incident of 14. 01. 2020, the FIR has been registered. Allegedly, nearly at 7:45 PM the informant, on noticing sound of a gunshot, came out of his house to find his



father screaming for help and lying in a pool of blood. The informant has further alleged that the informant's father, who had received gunshot injuries disclosed to the informant that this petitioner, with two others had conspired to get him shot at by 2-3 persons. It is evident from the FIR that there is no allegation against the petitioner of firing rather the allegation against him is of conspiring with two others for getting the deceased eliminated. The victim was taken to the Darbhanga Medical College and Hospital where he breathed his last. The motive behind the occurrence has been disclosed as previous enmity and allegedly one Md. Ishteyaque, a co-accused had given *supari* (money for killing) for the deceased which fact had got revealed. A panchayat was held in which the petitioner had tendered apology, which grudge the accused persons were carrying. The information regarding the occurrence was received by the police at 10 AM on 15.01.2020. It is noteworthy that the distance of the police station from the place of occurrence has been mentioned as 7 km and that the deceased was the Mukhia of the concerned Grampanchayat is an undisputed fact.

By an earlier order, case diary of the case was called for, a soft copy of which is there on record. The contents of the



post-mortem report have been quoted in paragraph 92 of the case diary from which it transpires that two *antemortem* injuries were found on the person of the deceased viz.; one lacerated wound over the glabellas of forehead and another lacerated punctured wound of entry was seen over lateral portion of upper part of right-side chest. The second wound in the nature of fire arm injury was found communicating through right to left, piercing chest wall pleura and lacerating upper lobe of the right lung and blood vessels. Whether the deceased, with the nature of injuries so sustained could have so vividly disclosed the petitioner's name with his parentage and age, is a question which ought to have been gone into by the police during the course of investigation which has not been gone into, as is evident from the case diary.

Be that as it may, the so called disclosure made by the deceased before the informant, of the petitioner and others having conspired in his killing, is the only material available against the petitioner. No material could be traced from the case diary, collected during the course of investigation, to substantiate the conspiracy part of accusation. The petitioner is in custody since 16.01.2020. The charge-sheet has already been submitted.



Learned counsel appearing on behalf of the informant has vehemently opposed the prayer for bail and has submitted that this court has rejected application for regular of similarly situated co-accused Md. Ishteyak Ahmad by an order dated 07.07.2020 passed in Cr. Misc. No. 18549 of 2020. I have perused the said order dated 07.07.2020 passed by a co-ordinate bench of this Court from which it transpires that this Court, in that case, did not have the benefit of perusal of the case diary and the co-accused has been refused bail on the ground that he and two others had resorted to firing, which is not the case of the prosecution. In such circumstance, considering nature of accusation against the petitioner and materials collected during the course of investigation, which do not corroborate the conspiracy part of allegation, in my considered opinion it will be a travesty of justice to refuse the application for regular bail in the facts and circumstances as noted above, after submission of charge-sheet. I am constrained to observe that unfortunately, on the sole basis of alleged uncertified statement of the deceased, concerning conspiracy hatched up by the named accused persons including this petitioner, he has been incarcerating in jail from the date of his arrest and there appears to no clue about real perpetrator(s) of the crime.



This application, for the reasons noted above, is allowed.

Let the petitioner, above named, be released on bail on furnishing bail bond of Rs. 10,000/-(ten thousand) with two sureties of the like amount each to the satisfaction of learned Chief judicial Magistrate, Samastipur in connection with Kalyanpur P.S. case No. 13 of 2020.

Let a copy of this order be communicated to the Superintendent of Police, Samastipur.

(Chakradhari Sharan Singh, J)

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