

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.18669 of 2020

Arising Out of PS. Case No.-36 Year-2019 Thana- DUMRAO District- Buxar

Akash Kumar @ Golu, aged about 19 years, (Male), Son of Harendra Rai
Resident of Village- Chilahari, P.S.- Dumraon, (Naya Bhojpur O.P.), District-
Buxar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Awadhesh Kumar, Advocate
For the State : Mr. Humayou Ahmad Khan, APP
For the Informant : Mr. Gajendra Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 01-07-2020

The matter has been heard *via* video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. Heard Mr. Awadhesh Kumar, learned counsel for the petitioner; Mr. Humayou Ahmad Khan, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State and Mr. Gajendra Kumar Singh, learned counsel for the informant, who has *suo motu* appeared.

3. The petitioner is in custody in connection with Dumraon (Naya Bhojpur O.P.) PS Case No. 36 of 2019 dated 03.02.2019 instituted under Sections 147/148/149/307/504/506 of the Indian Penal Code and 27 of the Arms Act.

4. The allegation against the petitioner is of firing on the informant resulting in injury on the neck and chest.

5. Learned counsel for the petitioner submitted that



though the incident is alleged to have occurred on 22.01.2019 but the statement of the informant was recorded only on 02.02.2019, without any explanation for delay. It was submitted that at least the local police should have been informed by any of the relatives of the informant even if he was injured. Learned counsel submitted that previously also in three cases the petitioner has been named and those cases were also filed by the informant and his family members and, thus, there is past enmity due to which the present case has also been falsely instituted. Learned counsel submitted that the petitioner is in custody since 03.02.2020.

6. Learned APP submitted that there is specific allegation by the informant about the petitioner having fired on him and the doctor had removed foreign particles from the neck and chest of the informant, which clearly shows that the intention was to kill. It was further submitted that the informant would not save the real culprit and falsely implicate the petitioner for the reason that false implication can be in addition to the persons who actually commit the crime, as the informant would not give a clean-chit to his assailants at the cost of only falsely implicating the petitioner.

7. Learned counsel for the informant submitted that



there is sufficient and reasonable explanation for the delay, inasmuch as, in the FIR itself it has been stated that the informant was found in an unconscious state and was taken to the hospital for treatment and there the police had come but because he was not in a position to make any statement, when he got better he had given such statement on 02.02.2019 and thereafter the FIR was lodged on 03.02.2019. It was submitted that in such background, the delay is not inordinate or would be fatal to the prosecution. It was further submitted that the informant having specifically identified the petitioner as the person who had fired on him, there cannot be doubt with regard to his involvement in the crime. It was further submitted that the petitioner had evaded the due process of law and was taken into custody after one year of the incident.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is not inclined to enlarge the petitioner on bail.

9. Accordingly, the application stands dismissed.

(Ahsanuddin Amanullah, J)

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