

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19860 of 2020

Arising Out of PS. Case No.-418 Year-2019 Thana- DHANARUA District- Patna

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Pankaj Kumar, aged 25 years, male, Son of Krishna Prasad Resident of
Village- Redbiga, P.S.- Dhanarua, District- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Harsh Singh, Advocate
For the Opposite Party/s : Mr. Murlidhar, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 02-07-2020

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

2. Heard Mr. Harsh Singh, learned counsel for the petitioner and Mr. Murlidhar, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioner is in custody in connection with Dhanarua PS Case No. 418 of 2019 dated 09.10.2019 instituted under Sections 399/402/414 of the Indian Penal Code and 25 (1-B)(a)/26/35 of the Arms Act.

4. The allegation against the petitioner is that he was part of a gang which indulged in crime and when the police went to his house at night, with great difficulty they could enter,



where the petitioner along with two others were arrested whereas three persons are said to have fled away. Further, from the possession of the petitioner, a countrymade pistol containing one live cartridge was recovered.

5. Learned counsel for the petitioner submitted that the police have lodged another case against the petitioner and other co-accused in which the allegation is that they had made firing in the market place to create panic, in which he has been granted bail by the Court below on the ground that the allegation is vague and there has been no injury on anybody. It was submitted that in the present case, recovery has been falsely shown from the possession and house of the petitioner, but the police have falsely implicated him for the reason that the local SHO is on inimical terms due to which such type of cases are being instituted against the petitioner. Learned counsel submitted that in the earlier order dated 03.02.2020 passed by a coordinate bench in Cr. Misc. No. 5880 of 2020 by which prayer for bail to the petitioner in the present case was rejected, it was observed that upon framing of charge or after six months of custody, whichever is earlier, the petitioner could renew his prayer for bail. Learned counsel submitted that he is in custody since 09.10.2019 and further, that charge has still not been



framed. Learned counsel submitted that similarly situated co-accused Ajay Kumar @ Matlav has been granted bail by the Court below in BP No. 5320 of 2020 by order dated 06.02.2020. Learned counsel submitted that the seizure list witnesses also are from another village which indicates that the same is not reliable as in the middle of the night persons from another village cannot be expected to reach the place of occurrence and be witness to such seizure.

6. Learned APP submitted that the petitioner is running a gang by the name of *Mahakal* having 15-20 members and when the police went to his house, initially there was resistance in allowing the police to enter, but when the police went inside, three persons managed to run away whereas three persons, including the petitioner, were caught from whom recovery has been made of firearms and a motorcycle with erased identification numbers and arms and ammunition were also recovered. It was further submitted that in the middle of the night persons not related to the petitioner having assembled in his house itself shows that there was some illegal activity or planning going on. Learned counsel submitted that in the FIR itself it has been explained that due to the police action people from nearby had assembled and, thus, if somebody unconnected



has been made a witness, it further fortifies the genuineness of the seizure as they have not come before any authority or Court to claim that they were not witnesses and their signature has been taken otherwise. Learned counsel submitted that the petitioner having been granted bail in the other case would not have any bearing in the present case for the reason that in the other case the only allegation is of making firing for scaring and terrorising the public and, thus, the Court below was inclined to enlarge him on bail. As far as Ajay Kumar @ Matlav is concerned, learned counsel submitted that though from him also one countrymade pistol and one live cartridge was recovered, but the main difference is that it was the house of the petitioner where the gang had assembled which indicates that the petitioner was the main brain and leader of the gang. Learned counsel further submitted that on the earlier occasion the observation of the Court would not also be of help because on merits, the petitioner does not deserve to be released on bail as he is running a gang which indulges in serious crime. Learned counsel submitted that the as far as the SHO is concerned, there cannot be any personal bias as he was only trying to perform his duty of controlling crime in the area and the petitioner leading a gang of criminals, obviously the action against him is not



palatable to the petitioner and there being a seizure list, the presumption in law is that such recovery was made and there being no document to show that the petitioner was entitled to keep such firearms and ammunition, clearly they were illegal and the circumstances of the arrest also shows that there was a meeting of the gang and incriminating articles have been recovered. It was further submitted that the petitioner has confessed about his involvement in numerous crimes and also has criminal antecedent.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the submissions of learned APP.

8. Accordingly, the Court is not inclined to enlarge the petitioner on bail.

9. The application stands dismissed.

10. At this stage, learned counsel for the petitioner submitted that the Court below be directed to expedite the trial.

11. In view thereof, let the Court below expedite the trial.

(Ahsanuddin Amanullah, J)

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