

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28268 of 2020

Arising Out of PS. Case No.-203 Year-2019 Thana- SALAKHUA District- Saharsa

1. ADHIN YADAV @ ABIN YADAV S/o Jaychandra Yadav Resident of Village-Mundichak, P.S.-Salkhua, District-Saharsa.
2. Roshan Yadav S/o Ramchandra Yadav Resident of Village-Mundichak, P.S.-Salkhua, District-Saharsa.
3. Mahadeo Yadav S/o Harilal Yadav Resident of Village-Mundichak, P.S.-Salkhua, District-Saharsa.
4. Guddo Yadav @ Guddu Yadav S/o Bindeshwari Yadav Resident of Village-Parsaha, P.S.-Salkhua, District-Saharsa.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	: Mr. P.K. Shahi, Sr. Adv.
	Ms. Rashmi Jha, Adv.
For the Opposite Party/s :	Mr. Nagendra Prasad, APP.

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

3 15-12-2020 Heard learned senior counsel for the petitioners and learned APP for the State, through video conferencing.

The petitioners have filed the instant application for grant of regular bail in connection with Salkhua P.S. Case No. 203 of 2019 registered under sections 302, 147, 148, 149 and 341 of the Indian Penal Code and section 27 of the Arms Act.

As per allegation in the FIR, while the son of the informant was going alongwith co-villager Lalan Yadav, it is stated that on the orders of Vijendra Yadav, the four named accused persons including the petitioner no. 4 surrounded them.



Thereafter Dinesh Yadav and Uday Yadav caught hold of the son of the informant while Ramesh Yadav, petitioner no. 4, petitioner no. 1 and Jaichandra Yadav shot Kamlesh Yadav. It is further stated that the petitioner no. 2, petitioner no. 3 and Fantu Yadav caught hold of Lalan Yadav. Thereafter other accused persons named in the FIR, surrounded Kamlesh Yadav and Lalan Yadav and killed them. It is stated by the informant that the occurrence has been witnessed by him as also Naresh Yadav, Manoj Yadav and others.

It is submitted by learned senior counsel appearing for the petitioners that from perusal of the FIR, it would transpire that there are 21 named accused persons in the F.I.R. An FIR being Salkhua P.S. Case no. 204 of 2019 was registered on the fardbeyan of the police inspector recorded at 5.30 p.m. the same day and which has been brought on record as Annexure-2 to the petition. It is submitted that from perusal of the said FIR at Annexure-2, it would transpire that the police reached the place of occurrence on getting information that firing had been taking place from both sides. On reaching the place of occurrence at 4.55 p.m. they found two persons dead. On search, it is stated that four live cartridges were recovered from the pocket of the deceased Kamlesh Yadav and two live



cartridges from the pocket of deceased Lalan Yadav. It is further submitted that the witnesses categorically stated that firing had taken place from both sides. It was much after lodging of the FIR at Annexure-2 that the instant FIR was registered on written information having been given at 9 p.m.. From perusal of the FIR it would transpire that the informant is not an eye witness to the occurrence and the petitioners have been falsely implicated in the case due to previous enmity, which would be evident from the title suit pending between the parties, the plaint of which has been brought on record as Annexure-3 to the petition. It is submitted that the witnesses should have disclosed the name of the accused persons when the FIR at Annexure-2 was being registered. It is submitted that independent witnesses, whose statements have been recorded in paragraphs no. 77, 78 and 79 of the case diary, have stated that there was indiscriminate firing from both sides. It is submitted that co-accused Bhmeshwar Prasad has been enlarged on anticipatory bail vide order dated 19.6.2020 (Annexure-4) passed in Cr. Misc. No. 8077 of 2020.

The application for bail is opposed by learned APP for the State and learned counsel for the informant. It is submitted by learned counsel for the informant that the petitioners herein are assailants in a case of double murder.



While petitioner nos. 1 and 4 fired on Kamlesh Yadav, petitioner nos. 2 and 4 fired on Lalan Yadav leading to death of both. It is thus prayed that the application for bail be rejected.

Case diary called for in the case has been received.

Having heard learned counsel for the parties and taking into consideration the facts and circumstances of the case together with the materials that has transpired in course of investigation, it transpires that petitioner nos. 1 and 4 together with two others are stated to have shot Kamlesh Yadav while petitioner nos. 2 and 3 along with Fantu Yadav are stated to have shot Lalan Yadav. The allegation of the four petitioners being assailants as stated by the informant is supported in course of investigation by the FIR named eye witnesses and also the postmortem report. So far as the FIR at Annexure-2 is concerned, in the same lodged by the police authority, the two persons arraigned as accused are the two deceased who as per the said FIR itself were already dead and the case was also registered only under the Arms Act. So far as grant of anticipatory bail to Bhmeshwar Prasad by order dated 19.6.2020 (Annexure-4) is concerned, it may be stated that the case of the said accused is distinguishable in so far as he is not named as one of the assailants.



Having heard learned counsel for the parties and for the reasons stated above, the application for bail of the petitioners is rejected.

(Partha Sarthy, J)

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