

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.82883 of 2019

Arising Out of PS. Case No.-597 Year-2019 Thana- KADAMKUAN District- Patna

Pawan Kumar @ Dabbu Son of Shyam Prasad Choudhary Resident of Village
- Lalita Niwas, Lal Lane, P.S. - Alamganj Chowki, Gulzarbagh, Distt.- Patna.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sanchay Srivastava
For the Opposite Party/s : Mr.Ram Naresh Ray

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

5 25-06-2020 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

This application for grant of anticipatory bail arises out of Kadam kuan P.S. Case No. 597 of 2019, disclosing offence under Sections 307, 120B, 324, 326 of the Indian Penal Code and Section 27 of the Arms Act.

Date of occurrence as disclosed in the F.I.R is 08.09.2019. The occurrence is said to have taken place at 7 P.M. (approx). F.I.R. was registered, however, on the subsequent date on 09.09.2019, in the night at 9.30 P.M. Shastri Kumar is the informant of the case, who is the elder brother of the victim. Seven persons have been named in the F.I.R., including this petitioner. Other persons, who have been named, are Nadir



Kaiser, Pawan Kumar, Pappu Haddi, Jimmy, Amin Dargah, Md. Sahab and Raju. It is the case of the prosecution, as disclosed in the F.I.R., that the victim was in the Real Estate business and was dealing in sale and purchase of lands. The persons named in the F.I.R. were brokers. Some dispute had arisen nearly three months ago between the victim and the persons named in the F.I.R., who had threatened the victim of killing him. This fact, the victim had allegedly shared with the informant. According to the informant, on the alleged time and date of occurrence, i.e. at 7 P.M. on 08.09.2019, when he was waiting for the lift in his B.P. Complex Apartment, Kadam Kuan to go up, he saw his brother coming in a car. After alighting from the car, he was approaching towards the informant. In the meanwhile, the informant has alleged, all the persons, named in the F.I.R., started indiscriminating firing. The informant's brother received firearm injuries, whereupon, he rushed towards to find that his brother was lying injured on the ground. It has further been alleged that when the miscreants were fleeing away after commission of the offence, persons nearby, apprehended one of them with pistol, who disclosed his name as Md. Sahab. He disclosed names of other persons also including this petitioner. The victim was taken to a private hospital. According to the



informant, since he was busy with the treatment of his brother, he filed his written statement on 09.09.2019, on the basis of which, the F.I.R. has been registered.

In order to create doubt over the case of the prosecution, as narrated in the present Kadam Kuan P.S. Case No. 597 of 2019, learned counsel for the petitioner has drawn my attention to Annexure-2 of this application, which was registered on previous day i.e. 08.09.2019, at 11.30 P.M. for an occurrence, which had taken place at 07.10. P.M. on the same day. In the said case Md. Sahab and Raju have been named in the F.I.R., on the allegation of recovery of firearms from their possession.

The prosecution's story, as narrated in the F.I.R. of Kadam Kuan P.S. Case No. 593 of 2019, is to the effect that the police learnt about the shooting near one Gyan Ganga shop and one miscreant trying to escape. The Officer Incharge of the Police Station, who is the informant of Kadam Kuan, P.S. Case No. 593 of 2019, has disclosed that when he reached at the place of occurrence, he found gathering of many people, who were trying to overpower a person. The said person was subsequently apprehended by the police with the help of local people, from whose possession, one automatic country made pistol and a live



cartridge was recovered. It seemed to the police that the firearm was recently used. The informant of Kadam Kuna P.S. Case No. 597 of 2019, was one among those present at the site, when the police had apprehended the miscreant.

The person apprehended disclosed his name as Md. Sahab @ Samad and, who is said to have disclosed the name of one Raju, as the person, along with whom, he had shot at someone in the apartment. It is also mentioned in the F.I.R. that the informant Shastri Kumar (informant of Kadam Kuan P.S. Case No. 597/2019) agreed to be a seizure list witness, in respect of seizure of arms recovered from the possession of Md. Samad @ Saheb.

The F.I.R. further mentions that the witness and other persons present there, informed about the firing by the miscreants targeting Jitendra Kumar, the brother of the informant of the present case. The informant of the present case is thus one of the seizure list witnesses of Kadam Kuan P.S. Case No. 593 of 2019.

In the background of the prosecution's versions, as disclosed in Kadam Kuan P.S. Case No. 593 of 2019 and the present Kadam Kuan P.S. Case No. 597 of 2019, learned counsel for the petitioner has argued that it is clear case of false



implication. He has submitted that had the informant of this case been eyewitness of the occurrence, said to have taken place in the apartment premises, he should have certainly disclosed the same to the police, when co-accused Md. Samad @ Sahab was arrested and from whose possession, a firearm was recovered. He has submitted that the petitioner has been falsely implicated, more than twenty-four hours, after the occurrence.

On perusal of the case diary, it is evident that there were business disputes between the victim and the petitioner.

Learned counsel appearing on behalf of the informant has submitted that there being direct allegation against the petitioner, he does not deserve regular bail.

However, on careful perusal of the F.I.R. of Kadam Kuan P.S. Case No. 597 of 2019 and 593 of 2019, I find substance in submission made on behalf of the petitioner, at least for the purpose of consideration of the present application, for grant of anticipatory bail, that implication by the informant of this petitioner for the alleged offence, more than twenty-four hours after he had become witness of seizure list in Kadam Kuan P.S. Case No. 593 of 2019, is not free from reasonable doubt and that the informant does not appear to be an eyewitness, as has been claimed in the F.I.R. Implication of the



petitioner in a subsequent F.I.R., lodged more than twenty-four hours after the alleged occurrence, when the police station was hardly 3 kms away, from the place of occurrence casts a serious doubt on the veracity of the case of the prosecution.

Considering the above, this application is allowed.

Let the petitioner, above named, in the event of his arrest/surrender within six weeks from today in the Court below, be released on bail on furnishing bail bonds of Rs. 10,000/-(ten thousand) with two sureties of the like amount each to the satisfaction of the learned Sri Ratneshwar Kumar Singh, A.C.J.M.-XII, Patna in connection with Kadam Kuan P.S. Case No. 597 of 2019, subject to the conditions as laid down under Section 438(2) of the Code of criminal Procedure.

This is subject to the condition that the petitioner shall present himself before the Police/Court, as the case may be, as and when required and in the event of failure on his part to appear before the Court on two consecutive occasions, his bail bonds shall be liable to be cancelled.

(Chakradhari Sharan Singh, J)

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