

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13113 of 2021

Arising Out of PS. Case No.-362 Year-2019 Thana- MOUZAHDIPUR District- Bhagalpur

Md Ejaj, Son of Late Md. Jaseem @ Late Md. Jasimuddin Resident of Village
- Husunabad, Mogulpura, P.S.- Babarganj, Distt.- Bhagalpur.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Praveen Kumar, Adv.

For the Opposite Party/s : Mr. A.G.

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
ORAL ORDER

8 18-11-2021 The applicant/accused in Crime No.362 of 2019 registered with Police Station Mojahidpur for the offences punishable under Sections 302 read 34 of the IPC as well as under Section 27 of the Arms Act at the instance of Rajesh Kishore Sah who happens to be brother of deceased, Rajeev Kumar, by this application is seeking his release on bail after filing of the charge sheet.

Heard the learned counsel appearing for the applicant. By taking me through the charge sheet he argued that the sole eyewitness to the incident is Vikash Kumar Gupta who happens to be the employee of the deceased. It is further argued that the accused persons were unknown to this witness and the prosecution has not conducted the Test Identification Parade to infer complicity of the applicant in the crime in question. The learned counsel for the applicant further argued that except the



confessional statement of co-accused Ashesh @ Manu Singh made to the police there is no other evidence against the applicant.

The learned prosecutor is accepting all these arguments made by the learned counsel for the applicant and submits that the only evidence which is available against the applicant is that of confessional statement made by the co-accused. I have consider the submissions so advanced and also peruse the charge sheet.

In the evening hours of 24.12.2019, after closing his shop, Rajeev Kumar (since deceased) was proceeding towards his house along with his employee PW Vikash Kumar Gupta. Rajesh Kishore Sah brother of the deceased was on another two-wheeler vehicle. Undisputedly he is not an eyewitness to the incident.

PW Vikash Kumar Gupta in his statement had stated when he along with pillion rider Rajeev Kumar (since deceased) were proceeding by two-wheeler vehicle from Kazichak locality of Bhagalpur, four unknown persons came on two motorcycle and accosted them. The assailants then indulge in indiscriminate firing in which Rajeev Kumar (since deceased) suffered gun shot wounds and he died.



The applicant /accused was not subjected to the Test Identification Parade. Surprisingly the charge sheet is containing confessional statement of accused Ashesh @ Manu Singh recorded by police. In the light of provisions of Section 25 and 26 of the Evidence Act such confessional statement cannot constitute evidence against the applicant.

Considering the nature of allegations against the applicant and the quality of evidence against him as well as the fact that he is behind bars from 02.07.2020, the order:-

- i. The application is allowed.
- ii. The applicant/accused in Crime No. 362 of 2019 registered with police station Mojahidpur is directed to be released on bail on executing P.R. bond of Rs.15,000/-(Rupees Fifteen Thousand) and on furnishing surety of the like amount to the satisfaction of the trial court with the following conditions:-

(I) The application/accused should not extend any threat, promise of inducement to the persons acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the Court or to any police officer.

(II) The applicant/accused should cooperate the trial in expeditious disposal of the trial against him.



(III) The applicant should not repeat commission of similar offences in future and if the applicant is found to have indulge in commission of any other offence hereinafter, the prosecution is entitled to apply to this Court for cancellation of bail granted to the applicant vide this order.

(A. M. Badar, J)

Prakash Narayan /-

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