

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14268 of 2021

Arising Out of PS. Case No.-44 Year-2020 Thana- HATHUA District- Gopalganj

Munna Yadav Son of Shrikishun Yadav, R/o village- Harkhauli, P.S.-
Meerganj, District- Gopalganj

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Rana Vikram Singh, Advocate.
For the Informant		Mr. P.N. Sahi, Sr. Advocate.
		Mr. Ranjeet Kumar Pandey, Advocate.
For the Advocate	:	Md. Mustaque Alam, APP

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

5 18-11-2021 The applicant/accused in Crime No. 44 of 2020 registered with Hathua Police Station for the offences punishable under Sections 302 and 120(B) read with Section 34 of the Indian Penal Code as well as Section 27 of the Arms Act at the instance of first informant Nishikant Tiwary by this application is seeking his release on bail after filing of the charge sheet.

Heard the learned counsel appearing for the applicant/accused. By taking through the evidence of PW's Shashank Tiwary, Manoj Tiwary, Rajesh Pandey and Jagdish Tiwary, it is argued that there is not a single eye witness to the crime in question. The informant claims to be an eye witness to the crime in question. He claimed to be present just at a distance



of 50 yards from the spot of the incident but has not averred that any gun shot was fired at him. The applicant/accused was arrested on the very next day and that too from his house and this conduct of the applicant is incompatible with his guilt. Despite allegations of indiscriminate firing by four accused persons, only two bullets were recovered from the dead body and no empties were found on the scene of occurrence. Therefore, according to the learned counsel for the applicant, pretrial detention of the applicant is not warranted.

The learned Prosecutor assisted by the learned counsel for the first informant opposed the application by contending that this is a case of direct evidence against the applicant and the applicant is having chequered criminal history inasmuch as five serious offences are already registered against him prior to the incident in question.

Considering the submissions so advanced and also perused the charge sheet.

First informant Nishikant Tiwary is brother of deceased Shashikant Tiwary. The FIR is lodged with promptitude on the date of the incident itself. The first informant claims to be present with his deceased brother at the Banglow in their agricultural field. He stated that he has witnessed the



incident from a distance of 50 yards. As per his version, four assailants including the present applicant came on the spot of the incident on two motorcycles and all of them indulged in firing at deceased Shashikant @ Munna Tiwary. The first informant attributed motive to accused persons and has named all accused persons including the present applicant. Result of the crime in question is instantaneous death of Shashikant @ Munna Tiwry because of gun shot wounds.

Whether the first informant is reliable witness or not is a question to be adjudicated after completion of trial and that too after considering the material elicited from his cross-examination.

However considering the fact that direct role in murderous assault on the deceased is attributed to the applicant by the first informant, who prima facie seems to be eye witness to the crime in question so also the fact that the appellant is having five criminal antecedents, no case for grant of bail to the applicant/accused is made out. Application is rejected.

Bhardwaj/-

(A. M. Badar, J)

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