

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM OFFICIAL CHAMBERS VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.19602 of 2021**

Arising Out of PS. Case No.-314 Year-2020 Thana- SAHPUR District- Patna

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Sheojee Sharma, Son of Late Mundrika Sharma, Resident of Village-
Ganghara, P.S.- Shahpur, District- Patna.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner/s : Mr.Shailendra Kumar Singh, Advocate
For the Opposite Party/s : Mr. Pranav Kumar, A.P.P.
For the Informant : Mr. Shekhar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 22-10-2021 Learned counsel for the petitioner undertakes to

remove all the defects as pointed out by office within four

weeks after start of normal functioning of the Court.

Heard learned counsel for the petitioner, learned
counsel for the informant and Mr. Pranav Kumar, learned A.P.P.
for the State.

Petitioner in the present case is seeking regular bail in
connection with Shahpur P.S. Case No. 314 of 2020 registered
for the offence punishable under Section 147, 148, 149, 307,
302 of the Indian Penal Code. He is in custody since
25.08.2020. Petitioner has got one criminal antecedent as stated
in paragraph '3' but he is on bail in the said case.

As per the F.I.R. lodged by one Guddu Kumar, son of



Sri Ram Pravesh Sharma who is a co-villager of this petitioner, on 24.08.2020 at about 9.00 A.M. the informant along with his other two brothers and father were sitting at his 'Darwaja'. In the meantime, this petitioner who was having a double barrel gun in his hand and six other named co-villagers of the informant together with one Shambhu Rai of village Kashimchak and 4-5 persons with him all of whom were lashed with fire-arms came at the 'Darwaja' and with a pre-concerted mind started firing indiscriminately. It is alleged that in the said firing one Jitendra Sharma who was the elder brother of the informant suffered fire-arm injury and died. One of the firing went away only touching the ear of younger brother Santosh Sharma for which he has been treated. It is alleged that the double barrel gun of the petitioner had got broken. His two brothers-in-law were having licensee gun and those were with the petitioner and the co-sharer of the petitioner has also got a licensee gun.

Learned counsel for the petitioner submits that in the F.I.R. it is alleged that altogether 12-13 persons were indiscriminately firing but the post-mortem report of Jitendra Sharma shows that he had suffered only two fire-arm injuries out of which one of the lacerated wound was over right hand.



The death had been caused due to the haemorrhage and shock caused by fire-arm injury which is injury no. 1(a) i.e. lacerated wound oval in shape margin left side of the neck.

Learned counsel further submits that so far as this petitioner is concerned, there is a general and omnibus allegation against him that he was also firing but Police has neither seized his gun nor any ballistic report has been obtained showing that any firing was done by the gun of this petitioner.

Learned counsel further submits that there is a counter case also which has been lodged by this petitioner, copy of which is Annexure '2' to the present application. From the counter case it will appear that the prosecution party of this case including the deceased Jitendra Sharma and this informant Guddu Kumar had come to the house of the petitioner and asked his younger brother Jitendra Sharma to come to the door side where 2-3 persons were sitting and they were calling him. It is alleged that when the petitioner also followed his younger brother, he found that Jitendra Sharma, Guddu Kumar, Kari Sharma all sons of Ram Pravesh Sharma who were lashed with rifle and the two sons of Jitendra Sharma were lashed with Farsa. Other co-accused Sonu Kumar and Satish, son of Dharmdeo Sharma were having licensee rifle and they started



firing upon the brother of this petitioner. The name of the brother of the petitioner was also Jitendra Sharma. As a result of the said assault the brother of this petitioner died and his younger brother Avinash Kumar was also assaulted by Farsa and got injured.

Learned counsel submits that this F.I.R. has also been lodged simultaneously with the F.I.R. in which this petitioner has been made accused.

Learned counsel submits that in course of investigation the further statement of the informant has been recorded and in his further statement apart from making general and omnibus allegations against all the named accused, the informant has laid more emphasis on the fact that the local criminal Shambhu Rai along with 4-5 had come on the asking of Jitendra Sharma (since deceased) and had indulged in firing.

Learned counsel submits that in the given circumstance where one of the brothers of the petitioner has been killed and another brother of the petitioner has been injured by the prosecution party, there being a general and omnibus kind of allegation against this petitioner with sole intention to implicate each and every member of the family and apart from such allegations there is no cogent material to



connect him as assailant of this case, the petitioner deserves privilege of bail.

On the other hand, learned counsel for the informant as well as Mr. Pranav Kumar, learned A.P.P. for the State have opposed the prayer for regular bail of the petitioner. Learned counsel for the informant has read over the statement made in paragraph '6', '23' and '24' of the case diary in which the further statement of the informant, mother of the deceased and wife of the deceased respectively have been recorded. They have stated about the presence of this petitioner along with other co-accused and the allegations are that of indiscriminate firing. They have also stated about the presence of Shambhu Rai along with 4-5 unknown persons and they have alleged that they were firing. In paragraph '47' the confessional statement of Shambhu Rai has been recorded who is said to have accepted his participation in the alleged occurrence on the asking of the deceased Jitendra Sharma.

Learned counsel for the informant as well as learned A.P.P. for the State submit that on spot the Police has seized three empty cartridges but so far as the injuries inflicted upon the deceased are concerned, one injury has been suffered on the neck and the another on the right hand/palm. Apparently the



injury suffered on neck has proved fatal. In course of their submissions, however, learned counsel for the informant and learned A.P.P. both accepted that the allegations are that of participation of the petitioner in the alleged occurrence and there is no specific allegation that he had fired upon the deceased or that his firing had proved fatal. It is not denied that the alleged gun which is attributed to the petitioner has not been seized by the Police and there is no ballistic report.

Considering the facts and circumstances of the case wherein with regard to the alleged occurrence there are two F.I.Rs. (Annexure '1' and '2'), one person from each of the side has been killed, the allegation against the petitioner is that he was also among 12-13 persons who were indiscriminately firing but the post-mortem report shows only two fire-arm injury on the body of the deceased and further that in his further statement the informant has laid much emphasis on the presence of co-accused Shambhu Rai and 4-5 unknown persons, as per his confessional statement this petitioner is not said to be the assailant of the deceased, the petitioner has remained in custody for over one year, investigation against him is complete but the trial is not likely to be concluded in near future and there is no submission on behalf of the State that his release at this stage is



likely to result in tampering with the evidence or interfering with the course of trial, this Court directs release of the petitioner above named on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate -1st , Danapur in connection with Shahpur P.S. Case No. 314 of 2020, subject to the condition as laid down under Section 437 (3) Cr.P.C. as under :

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of



bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

