

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20773 of 2021

Arising Out of PS. Case No.-198 Year-2020 Thana- HASANPUR District- Samastipur

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GUNJAN YADAV @ GUNJAN KUMAR RANA SON OF UMESH YADAV
Resident of Village - Bhuidhar, P.S.- Hasanpur, Distt.- Samastipur.

... .. Petitioner.

Versus

The State of Bihar

... .. Opposite Party.

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Appearance :

For the Petitioner	:	Mr. Yogesh Chandra Verma, Senior Advocate. Mr. Bipin Kumar, Advocate.
For the State	:	Mr. Anant Kumar-1, A.P.P.
For the Informant	:	Mr. Jitendra Narain Sinha, Advocate.

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

3 30-11-2021 The applicant/accused in Crime No.198 of 2020 registered with Police Station-Hasanpur for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code as well as under Section 27 of the Arms Act by this application is seeking his release on bail during the pendency of the trial.

Heard learned Senior counsel appearing for the applicant/accused.

He took me through the F.I.R. as well as the report of Post-Mortem Examination and argued that, according to the prosecution, the incident took place at 10.45 P.M. on 28.08.2020. The prosecution has not indicated as to how at such midnight, the first informant was in position to identify the



assailants. It is further argued that the allegations levelled are omnibus and without disclosing any specific role to the specific accused. Learned Senior counsel further argued that the report of Post-Mortem Examination falsifies the case of the prosecution because the allegations are of about indiscriminate firing. It is further submitted that the applicant is a college student, who had appeared in the Examination, therefore, he is entitled to be released on bail. It is further argued that there is delay of four days in lodging the F.I.R.

As against this, learned Prosecutor argued that the assailants were known to the first informant and as three of them were not known, the first informant has specifically stated so in respect of them. It is further argued by the learned Prosecutor that the report of Post-Mortem Examination is corroborating the case of the prosecution.

I have considered the submissions so advanced and also perused the materials placed before me.

The F.I.R. is lodged by Rajan Roy. He is the brother of the deceased Rahul Kumar. The F.I.R. is recorded at Sadar Hospital, Begusarai, on 01.09.2020 after the death of Rahul Kumar. Till 31st August 2020, Rahul Kumar was taking medical treatment at the said Hospital and perusal of the F.I.R. shows



that after the death, the report came to be lodged.

According to the prosecution case, on 20.08.2020, there was quarrel between Sujeet Kumar- uncle of the first informant Rajan Roy and the accused persons for the issue of money. Thereafter the incident in question is stated to have taken place on 28.08.2020. The place of the incident is at the door of the house of the first informant Rajan Roy. It is stated by the first informant, who happens to be an eye witness to the incident, that he as well as all of his family members including his uncle Sujeet Kumar were sleeping in the house at that time. According to the first informant, accused persons including the present applicant and three unidentified assailants came at his door and indulged in firing. Upon hearing the sound of gun shot, he along with his family members including his grandfather Rameshwar Yadav, father Shambhu Yadav, uncle Santosh Yadav etc. came out. It is further averred that Rahul Kumar tried to pacify the assailants. However, the assailants were insisting to ask Sujeet Kumar to come out of the house. When the assailants could not get Sujeet Kumar and when Rahul Kumar (since deceased) was insisting the accused persons to leave the spot, they indulged in firing. The first informant stated that the present applicant so also co-accused Santosh



Kumar Yadav and Ramdhani Yadav and three unidentified assailants indulged in firing. He stated that the bullet hit the abdomen of Rahul Kumar.

That is how, Rahul Kumar was admitted to Sadar Hospital Begusarai, where he succumbed to the injuries in the midnight of 31.08.2020. Then F.I.R. was lodged. The delay in lodging the F.I.R. cannot be a ritualistic formula for throwing away the case of the prosecution and particularly at the stage of the bail, this delay is of no consequence. Section 34 of the Indian Penal Code prescribes for vicarious liability on the assailants. Once it is established that the accused persons were harboring common intention and the crime in question was committed by them in furtherance of their common intention then specific role is not required to be stated by the prosecution. Still in the case in hand, specific role of firing is attributed to applicant Gunjan Yadav.

Report of Post-mortem Examination of the dead body of Rahul Kumar shows that he was hit by two bullets.

Prima facie, it is seen that accused persons including the present applicant armed with the firearms had been to the house of the first informant in late night hours. This reflects their common intention. The result is reflected from the incident. No



case for grant of bail is therefore made out. The application is, accordingly, rejected.

Needless to mention that the learned trial court shall not be swayed by the observations of this Court made in this order and those are only restricted for the purpose of rejection of the bail.

(A. M. Badar, J)

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