

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32845 of 2020

Arising Out of PS. Case No.-423 Year-2019 Thana- PATNA CITY CHOWK District- Patna

Ashif Khan @ Monu @ Areef Hasan, aged about 36 years, Gender-Male, S/o Shekh Shahid Hasan, Resident of Mohalla-Shah Faisad Ki Maidan, P.S.- Chowk, District-Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Jay Ram Prasad, Advocate

For the State : Mr. Md. Mushtaque Alam, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 20-05-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Jay Ram Prasad, learned counsel for the petitioner and Mr. Md. Mushtaque Alam, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioner apprehends arrest in connection with Chowk PS Case No. 423 of 2019 dated 31.12.2019, instituted under Sections 341, 323, 307, 504/34 of the Indian Penal Code and 27 of the Arms Act, 1959.

4. The allegation against the petitioner and three others is of assault on the informant with fists and slaps and specifically against the petitioner that when the informant was trying to run away, he had taken out his pistol from waist and



fired on him causing injury on his back due to which he fell down and became unconscious.

5. Learned counsel for the petitioner submitted that the allegation is absolutely false and frivolous. It was submitted that even if it is assumed that there was some incident, it was only a skirmish and the allegation of having fired at the back is totally false. It was submitted that even in the injury report, no gun-shot injury has been found and on the back, only a lacerated wound has been found and the doctor has opined that all the injuries were simple in nature caused by hard and blunt substance. Learned counsel submitted that another aspect of the matter is that when the informant himself states that four accused persons, including the petitioner, had assaulted him with fists and slaps and he was trying to run away, then the allegation that the petitioner fired at his back is also not practically possible for the reason that when a person is running away, admittedly, his back is towards the accused and he would not be in a position to identify as to who had committed what overt act. However, he reiterated that no gun-shot injury, much less on the back, and only one simple lacerated wound has been found. Learned counsel submitted that the petitioner has no criminal antecedent. Further, it was submitted that there is no



eye witness to the incident and all the witnesses, whose statements have been recorded, are hearsay witnesses.

6. Learned APP, from the case diary, submitted that the witnesses have supported the incident. However, he did not controvert the fact that there is no eye witness and all the witnesses are hearsay witnesses. Further, it was also not controverted that the injury report does not disclose any serious injury, much less bullet injury and only lacerated wound has been found on the back of the informant, which is said to be simple in nature caused by hard and blunt substance. He submitted that even with regard to antecedent, nothing adverse has come in the case diary available with him.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the event of arrest or surrender before the Court below within six weeks from today, the petitioner be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned Additional Chief Judicial Magistrate-II, Patna City in Chowk PS Case No. 423 of 2019, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 and further (i) that one of the bailors shall be a close



relative of the petitioner, (ii) that the petitioner and the bailors shall give an undertaking with regard to good behaviour of the petitioner, and (iii) that the petitioner shall cooperate with the Court and the police/prosecution. Any violation of the terms and conditions of the bonds or undertaking or failure to cooperate shall lead to cancellation of his bail bonds.

8. It shall also be open for the prosecution to bring any violation of the foregoing conditions of bail by the petitioner, to the notice of the Court concerned, which shall take immediate action on the same after giving opportunity of hearing to the petitioner.

9. The application stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

J. Alam/-

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