

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37654 of 2020

Arising Out of PS. Case No.-61 Year-2020 Thana- BEGUSARAI MUFFASIL District-
Begusarai

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KANHAIYA KUMAR Son of Ram Balak Singh Resident of Village-
Bishnupur Chaturbhuj, P.S.- Muffasil (Ratanpur O.P.), District- Begusarai

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Jai Prakash Singh

For the Opposite Party/s : Mr. Ajay Kumar No.2, APP

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

5 17-03-2021 Heard both sides.

The petitioner seeks bail in Muffasil P.S. case No.
61/2020 registered u/s 302/34 of the IPC and u/s 27 of Arms
Act.

The informant alleged that on 05.02.2020 at about 7
in the evening his nephew Rajeev Kumar had gone to Kali
Sthan for worship. The informant came to know that his nephew
was injured by fire arm. Having received such information the
informant came to Kali Sthan and saw the dead body of his
nephew lying on the ground in the premises of Kali Sthan.

The learned counsel for the petitioner submits that
petitioner is not named in the FIR. The informant and all other
family members of the deceased simply stated that four
criminals came on two motor cycles out of which one opened



fire killing the deceased in the premises of temple itself but nobody disclosed the name of the petitioner. For the first time the name of petitioner surfaced in the case in the statement of Shivam Kumar in paragraph 36 of the case diary. Shivam Kumar was arrested in connection with Muffasil PS case No. 59/2020 registered u/s 279, 336, 414/34 of the IPC and u/s 30(a) of the Bihar Prohibition & Excise Act. He is said to have stated before the police that he was also present at the time of occurrence and he saw the occurrence. Later on somebody informed him that Kanhaiya Kumar killed the deceased. He also identified Kanhaiya Kumar on seeing the photographs of Kanhaiya Kumar. Shivam Kumar did not disclose in his statement that who firstly informed the name of the petitioner that the petitioner fired killing the deceased on the spot, therefore, this witness is also a hearsay witness. Thereafter, the police took the confessional statement of Deepak Kumar and Raju Kumar Singh in paragraph 66 and 67 of the case diary. It is alleged that on the basis of confessional statement of Raju Kumar Singh the pistol and live cartridges were recovered from under the earth kept by the Raju Kumar Singh but the police did not get the pistol and cartridges examined by the FSL to show that by the same pistol firing was made. It was Raju Kumar



Singh, who is said to have confessed his guilt and in pursuance thereof the pistol is said to have been recovered but there is no tangible evidence against the petitioner that petitioner fired killing the deceased. The petitioner is in custody since 09.07.2020.

Mr. Ajay Kumar No.2, the learned APP, opposed the prayer for bail and submits that in paragraph 10 of the case diary niece of the deceased also disclosed about the occurrence but she did not disclose the name of any of the accused. For the first time the name of petitioner surfaced in the case in the statement of Shivam Kumar who happens to be brother of the deceased. Shivam Kumar was arrested in another case and he is said to have made statement before the police. Shivam Kumar disclosed that he identified the petitioner after seeing his photographs. It is further submitted that from perusal of paragraphs 63, 65, 66 and 67 of the case diary, it would appear that Raju Kumar Singh and Deepak Kumar are said to have confessed their guilt and in pursuance thereof the arms and ammunition were said to have been recovered.

From perusal of the records, I find that petitioner is not named in the FIR. For the first time name of the petitioner surfaced in the case in paragraph 36 of the case diary. The



police recorded statement of Shivam Kumar when he was arrested in another criminal case, who is said to have disclosed before the police that he saw the occurrence with his own eyes. Later on somebody informed that petitioner fired killing the deceased on the spot. It further transpires that witness Shivam Kumar is also claimed to have identified the petitioner by seeing his photographs but who showed the photograph of petitioner to him he did not disclose in his statement. Raju Kumar Singh and Deepak Kumar confessed their guilt and in pursuance thereof the arms said to have used in the crime has been recovered but it appears that save and except statement of Shivam Kumar at a belated stage and he also did not disclose the source of his information about the identification of the petitioner, I find that petitioner deserves bail.

Accordingly, the petitioner, above named, is directed to be enlarged on bail on his furnishing bail bond of Rs. 10,000/- (rupees ten thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Begusarai in connection with Muffasil P.S. case No.61/2020.

BKS/-

(Prabhat Kumar Jha, J)

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