

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No 39212 of 2020**

Arising Out of PS. Case No.-56 Year-2020 Thana- BIRPUR District- Supaul

RASHID ANSARI SON OF LATE SHARMA HARUN @ MD. HARUN
RESIDENT OF VILLAGE DINBANDHI, WARD NO. 12, P.S. BIRPUR,
DISTRICT- SUPAUL

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr Shashank Chandra, Advocate
For the Opposite Party/s : Mr Rajesh Kumar, APP

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL ORDER

7 **28-04-2021** In view of sudden surge of COVID – 19 infection, there is limited functioning of the Court and, therefore, the matter has been listed today for consideration through Virtual Mode.

Heard learned counsel for the petitioner and the learned APP for the State.

The petitioner seeks bail in Birpur Police Station (for brevity, *PS*) Case No 56 of 2020 dated 12.03.2020 instituted for the offence punishable under Sections 147, 148, 323, 341, 326, 307, 379, 506 of Indian Penal Code (for brevity, *IPC*).

This Court had earlier called for the case diary in respect of the counter version of the occurrence arising out of



Birpur (Balua Bazar) PS Case No 59 of 2020 lodged by the accused side. The same has been received. Matter was earlier adjourned to enable the learned APP for the State to examine the same.

Prosecution case is that petitioner and nine members of his family have come armed and started scuffling with the informant's brother. In the scuffle, it is submitted that the petitioner, who was carrying a sword, has assaulted Md Shamim as well as Md Bashir. Md Bashir died three days after the alleged occurrence.

Petitioner's counsel submits that the petitioner has no criminal antecedent. Petitioner and prosecution party are agnates. A dispute regarding title of some lands gave rise to this scuffle and in the heat of the moment, the injuries have been sustained by the parties. The petitioner's side has also sustained various injuries which is apparent from the investigation in Birpur (Balua Bazar) PS Case No 59 of 2020. The falsity of allegation is evident from the fact that allegation against the petitioner is of assaulting two persons. However, there is no injury report or details of injury in respect of Md Rashid. Even the injury report in respect of Md Bashir, at best, discloses a single blow, though on his head. The submission is that the



manner in which the occurrence has occurred; considering the instant prosecution case, the counter version in Birpur (Balua Bazar) PS Case No 59 of 2020, the injury report/s, and materials collected during investigation of both the First Information Reports, it is clear that the offence under Section 302 of IPC would not be made out against the petitioner as it is not a cold blooded murder even as per the prosecution case. It is in such circumstances that the petitioner is in custody since 22.08.2020.

Learned APP has opposed the prayer for bail though he is not in a position to deny or dispute the fact that accused side have also sustained injuries which is apparent in the counter case, namely, Birpur (Balua Bazar) PS Case No 59 of 2020. It is however submitted that the petitioner is accused of having assaulted the deceased (Md Bashir) on his head by sword and the said Md Bashir died due to injuries inflicted on his head.

Considering the rival submissions, prayer for bail is allowed. Let the petitioner, above named, be released on bail on his furnishing bonds of Rs 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of Additional Chief Judicial Magistrate I, Birpur, District - Supaul in Birpur PS Case No 56 of 2020 dated 12.03.2020 subject to the following conditions:-



(i) That one of the bailors will be a close relative of the petitioner who will give an affidavit giving genealogy as to how he is related with the petitioner. The bailor will also undertake to inform the Court if there is any change in the address of the petitioner.

(ii) That the petitioner will be well represented on each date and if he fails to do so on two consecutive dates, his bail bond will be liable to be cancelled.

Learned counsel for the petitioner is expected to honour his undertaking given in the instant proceedings today for depositing requisite Court fee and removing the defect (s), as pointed out, when called upon to do so.

(Madhuresh Prasad, J)

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