

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3779 of 2021

Arising Out of PS. Case No.-253 Year-2019 Thana- SALAKHUA District- Saharsa

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Baleshwar Yadav, male, aged about 37 years, Son of Late Ramdev Yadav,
Resident of Village- Belahi Jilabia More, P.S.- Salkhua, District- Saharsa.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Diwakar Prasad Singh, Adv.

For the Opposite Party/s : Md. Aslam Ansari, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

4 07-10-2021 Heard Diwakar Prasad Singh, the learned Advocate

for the petitioner and Md. Aslam Ansari, the learned APP for

the State.

The petitioner seeks bail in anticipation of his
arrest in connection with Salkhua P.S. Case No. 253 of
2019, dated 10.11.2019, instituted for the offences under
Sections 302 and 34 of the Indian Penal Code and Section
27 of the Arms Act.



The F.I.R. has been lodged by the son of the deceased but without naming anybody or suspecting any person for the killing of his father. The informant at the time of the occurrence, admittedly, was at a distance of hundred kilometers from the place of occurrence.

After preliminary investigation, the I.O. of the case was suspended. Thereafter, another I.O. appears to have been appointed. It appears from the police papers that the new I.O. of the case employed the services of a spy, who was instructed to collect information regarding the death of the deceased. During the course of investigation, it came to light that four persons, including the petitioner were responsible for the murder of the deceased.

It has been submitted on behalf of the petitioner that the source of information to the spy has not been penned down in the police papers. All that has been stated is that it was discovered through the agency of the spy that the petitioner and three others were responsible for the murder. Later, two persons, namely, Lakhan Sada and Dhutar Sada, whose statements have been recorded in



paragraph Nos. 44 and 45 of the case diary diary, have stated before the police that on the sound of firing, they came out of their houses and saw the petitioner and three others running away with pistols in their hands and exchanging conversation that the deceased has been killed for his objection to their drinking habits.

It has been urged that such stray information by two of the witnesses at a belated stage of the investigation cannot be the basis for prosecuting the petitioner. It has further been submitted that such statements are not worth accepting, for the reason that it does not appear to be probable that four persons would be spotted by these two witnesses and would also be heard making statements which are self-incriminating.

Additionally, it has been argued that if this was the only material against four of the accused persons including the petitioner, there was no reason for charge-sheeting one of them, namely, Baijnath Yadav and keeping the investigating pending with respect to others including the petitioner.



Thus the sum and substance of the arguments of the learned counsel for the petitioner is that the accusation against him and others is only based on suspicion and on information provided to the police by a spy who has not been named till date. This, it has been urged, is the handy-work of the police in order to justify the charge-sheeting of one of the suspected persons, namely, Baijnath Yadav.

On the basis of the aforesaid arguments, this Court had called for the case diary on 29.07.2021. The diary has since been received.

Beyond the aforesaid statements of the two witnesses recorded in paragraph Nos. 44 and 45 of the case diary and the conclusion drawn by the Investigating Officer in paragraph No. 83 of the same, there is no other material, it has been argued, to justify the rejection of the anticipatory bail application of the petitioner by the learned Court below.

Regard being had to the facts afore-stated, the petitioner above-named, in the event of his arrest or surrender before the learned Court below within a period of eight weeks, is directed to be released on bail on his



furnishing bail-bonds in the sum of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate-IV, Saharsa in connection with Salkhua P.S. Case No. 253 of 2019, subject to the conditions laid down under Section 438(2) of the Cr.P.C.

However, it is cautioned that if the petitioner does not participate in the investigation or if he is charge-sheeted and he does not participate in the trial, his bail would be rendered liable to be cancelled.

The application stands allowed.

(Ashutosh Kumar, J)

Praveen-II/-

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