

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18887 of 2021

Arising Out of PS. Case No.-362 Year-2020 Thana- KUDRA District- Kaimur (Bhabua)

MD. SHAMSHAD ALI Son of Sabbir Ali Resident of Village- Sarai, P.S.-
Kudra, District- Kaimur at Bhabua.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Rajani Kant Pandey, Advocate
For the Opposite Party/s : Mr.A.G.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

2 14-02-2022 Due to the third wave of COVID-19 Pandemic, the
matter is being taken up by way of Virtual Court proceeding.

The matter has been listed under the heading ‘For
Orders’ under the orders of Hon’ble the Chief Justice.

Heard learned counsel for the petitioner and learned
APP for the State through virtual mode.

Learned Counsel for the petitioner is directed to
remove the defect(s), as pointed out by the office, within a
period of four weeks after restoration of normalcy.

The petitioner is apprehending his arrest in connection
with Kudra P.S. case No.362 of 2020 registered under Sections
341, 323, 307, 504, 506/34 of the Indian Penal Code and
Section 27 of the Arms Act.

The prosecution case, in short, is that the informant



received the application of one Irsad Ali on 24.11.2020 and the informant enquired the matter. In the application, the allegation is that while Irshad Ali was going to poultry farm, 6-7 persons armed with weapons came and assaulted him and opened firing, but he was saved. The informant further alleged that during course of enquiry he received C.D.R. of Mahtab Ali, he found that elder brother of Irshad, namely, Shamsad Ali (petitioner) called Mahtab Ali several times.

It has been submitted on behalf of the petitioner that the petitioner has got no criminal antecedent and there is no allegation of tampering of witnesses alleged against the petitioner. The petitioner has falsely been implicated in this case. The petitioner is in defence services and because of land dispute between the parties, he has been dragged in the present case. As per the F.I.R., the alleged occurrence is said to have taken place on 24.11.2020 and it is alleged that one Irshad Ali had filed a Complaint before the concerned police officer. The said complaint is not the part of the F.I.R. nor it is on the record. Though the occurrence had taken place on 24.11.2020, the case was instituted on 07.12.2020. The delay in institution of the case in respect of 24.11.2020 has not been explained by the prosecution and the same casts doubt on the entire prosecution



case. It has further been submitted on behalf of the petitioner that ante dated F.I.R. has been instituted at the instance of Irshad Ali, with whom the petitioner has got land dispute. It is further pointed out that said Irshad Ali, who is alleged to be so-called complainant of the present case, happens to be the accused in Annexure 2 to the present application and only to save his skin in Annexure 2 to the present application, which is F.I.R. instituted under Section 307 of I.P.C., he got the present case instituted in collusion with the concerned police station. Further from perusal of the record, it appears that none is said to have been injured in course of occurrence. Hence no offence under Section 307 of I.P.C. is attracted in the present case. Rest of the offences are triable by the Magistrate. In the present case also the name of the petitioner has transpired on confessional statement of co-accused, which was made in connection with the investigation of Annexure 2 to the present application.

On behalf of the State, it is submitted that the petitioner is named in the complaint case/F.I.R.

It is necessary to indicate here that this Court while considering the prayer made in the present anticipatory bail application has taken note of the exponential rise in number of covid cases due to outbreak of third wave of Covid-19



pandemic. Further this Court can also not lose sight of the fact that the condition of jails is not conducive and suitable to the present situation which has arisen due to the sudden rise in covid cases.

Considering the facts and circumstances, the petitioner, above named, in the event of arrest or surrender before the learned court below within a period of twelve weeks from today, be released on anticipatory bail on his personal bond to the satisfaction of learned Chief Judicial Magistrate, Kaimur at Bhabua in connection with Kudra P.S. case No.362 of 2020, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

Once the normalcy is restored, the petitioner shall furnish bail bonds of Rs.10,000/- (Rupees ten thousand) with two sureties of the like amount each within a period of eight weeks to the satisfaction of the Court concerned in connection with the aforesaid case.

(Sudhir Singh, J)

Narendra/-

U		T	
---	--	---	--

