

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.29276 of 2021

Arising Out of PS. Case No.-56 Year-2020 Thana- BUNIYAD GANJ District- Gaya

Pankaj Kumar, S/O Nand Lal Prasad, R/O Village - Manpur, Shiv Charan Lane, P.S. Buniyadganj, District - Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Krishna Prasad Singh, Senior Advocate.
Mr. Dr. Anshuman, Advocate
For the Opposite Party/s : Mr. Satyadeo Singh Yadav, APP

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
ORAL ORDER

4 04-01-2022 The applicant/accused in Crime No.56 of 2020 registered with Police Station-Buniyadganj for the offences punishable under Sections 448, 341, 323, 307 read with Section 34 of the Indian Penal Code to which Section 302 of the Indian Penal Code was added subsequently, by this application is seeking his release on bail after filing of the charge-sheet.

Heard learned Senior counsel appearing for the applicant/ accused. He contended that though the application of co-accused Raja Kumar alias Raj Kumar alias Raja Babu was rejected by this Court vide order dated 13.09.2021 passed in Criminal Misc. No.26328 of 2021, the applicant is having case on merit and therefore he is entitled for bail. It is further argued that the dying declaration of the deceased Krishna Prasad Gupta



is totally contrary to the version of the prosecution as reflected from the F.I.R. lodged by his son. According to the learned Senior counsel appearing for the applicant, the incident in question took place at the spur of the moment and the eye witness account reflected from the case diary makes this aspect clear. Therefore, pretrial detention of the applicant is not warranted. It is further pointed out that this Court has already released co-accused Nand Lal Tanti @ Nand Lal Prasad @ Nand Lal Prasad Tanti on bail vide order dated 15.12.2021 passed in Criminal Misc. No. 25343 of 2021.

As against this, the learned A.P.P. as well as the learned counsel appearing for the first informant vehemently opposed the application by contending that the deceased had suffered multiple wounds and he died because of cardio respiratory arrest caused by the applicant.

I have considered the submissions so advanced and also perused the case diary.

The applicant herein is Pankaj Kumar. Co-accused Raj Kumar is his brother. First informant Ravi Kumar is the son of deceased Krishna Prasad Gupta. The First informant is also making an allegation of sustaining injuries in the incident in question. The incident took place on 25.04.2020 at 07.30 P.M.



Deceased Krishna Prasad Gupta succumbed to the injuries suffered by him while taking medical treatment on 09.05.2020. The F.I.R. of the incident was lodged on 26.04.2020. First informant Ravi Kumar has reported in the First Information Report lodged by him that the accused persons namely, Nand Lal Tanti, Raj Kumar and Pankaj Kumar (the applicant) came to his house armed with sticks, hockies and stones. They all started abusing and when his father Krishna Prasad Gupta went out of the house, they all started assaulting Krishna Prasad Gupta. Because of the injuries sustained by his father, his father started vomiting and was taken to the hospital. That is how initially the offence was registered primarily under Section 307 of the Indian Penal Code. During the course of medical treatment of deceased Krishna Prasad Gupta his dying declaration came to be recorded and it is finding its place at paragraph-17 of the case diary. This dying declaration is inconsistent to the version of the prosecution found in the F.I.R. The declarant has stated in his declaration recorded by the police that he heard sound of abuses and quarrel from near the Shiv Mandir. Therefore, he went there and saw that principal accused Raj Kumar was assaulting his son Ravi Kumar (the first informant) by means of fist blows. Declarant Krishna Prasad



Gupta further stated that therefore he tried to intervene and at that time co-accused Pankaj Kumar (the applicant) came and they have assaulted the declarant by means of fist blows. Thus the declarant is stating the place of assault as near the Shiv Mandir and the manner of assault is by means of fist blows. Similar is the version of the incident coming on record from the statements of eye witnesses Rubi Devi and Umesh Prasad in paragraphs 7 and 8 of the case diary. Their versions reveal that the first informant Ravi Kumar was creating a ruckus under influence of liquor and the accused were trying to pacify him. In that process both parties started assaulting each other by means of fist blows. Record of investigation thus shows that the incident in question took place not at the house of the first informant but near the Shiv Mandir. The incident took place at the spur of moment when the deceased intervened in the quarrel between co-accused Raj Kumar and the first informant Ravi Kumar. In that process, the applicant is also stated to have joined and used fist blows in assaulting the deceased. At the time of trial one will have to decide which offence is made out by the prosecution in causing death of Krishna Prasad Gupta by means of fist blows by the accused. Cause of death as stated by the autopsy Surgeon is head injuries.



Considering the nature of evidence available against the applicant as well as the fact that the investigation of the crime in question is already over, further pretrial detention of the applicant is not warranted. Co-accused Nand Lal Tanti @ Nand Lal Prasad @ Nand Lal Prasad Tanti is already released on bail vide order dated 15.12.2021 passed in Criminal Misc. No. 25343 of 2021 and on the principle of parity, the applicant is also entitled for bail. Therefore, the following orders:

(i). The application is allowed.

(ii). The applicant/accused in Crime No.56 of 2020 registered with Police Station-Buniyadganj for the offences punishable under Sections 448, 341, 323, 307 read with Section 34 of the Indian Penal Code to which Section 302 of the Indian Penal Code was added subsequently, be released on bail on executing P.R. bond of Rs.10000/-(Rupees Ten Thousand) on furnishing surety of the like amount to the satisfaction of the trial court with the following conditions:

(I). The applicant should not extend any threat, promise or inducement to the persons acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the Court or to any police officer.

(II). The applicant should cooperate the trial in



expeditious disposal of the trial against him.

(III). The applicant should not repeat commission of similar offence in future and if he is found to be involved in commission of similar offence, the State is at liberty to apply for cancellation of bail granted to the applicant in the instant case.

(IV). The applicant will not contact the first informant or the witnesses of the prosecution in any manner till disposal of the trial against him.

The applicant to remove all office objections forthwith and the Registry to issue the certified copy of this order only after removal of office objections by the appellant/accused.

Bhardwaj/-

(A. M. Badar, J)

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