

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.29826 of 2022

Arising Out of PS. Case No.-55 Year-2022 Thana- KOILWAR District- Bhojpur

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Tuntun Sah @ Tuntun Sao, S/o Omkar Sah, Resident of Village- Pachrukha
Kala, P.S.- Kolwar, District- Bhojpur, Ara.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gopal Govind Mishra, Advocate

For the Opposite Party/s : Mr. Md. Mushtaque Alam, APP

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 16-09-2022 Heard learned counsel for the petitioner and the learned
APP for the State through virtual mode in view of COVID-19.

Let the defect(s), if any, as pointed out by the office be
removed within four weeks.

The petitioner is in judicial custody in connection with
Koilar P.S. Case No. 55 of 2022 for the offences under Sections
302, 147, 148 and 149 of the Indian Penal Code and Section 27 of the
Arms Act.

As per prosecution story, the informant, Lovely
Sharma alleged in the FIR that she had a talk with her father
who had stated that he will be returning home after the “Bhumi
Pujan”. As he failed to return, in the meantime, she got information
that two persons have been shot dead near ‘Bhojpur Sone Diyara’
whose dead bodies have been forwarded to the Sadar Hospital, Ara.
Upon said information, she rushed to the Sadar Hospital and



recognized the dead body of her father. She has further alleged that she came to know that the accused persons including the petitioner herein had opened fire resulting into death of her father on the spot.

In this matter, case diary was called for on 05.08.2022 which has since been received and has been perused by learned APP for the State.

From bare perusal of the post-mortem report shows that both the deceased have received one gun shot injury each inasmuch as while on Sanjit Kumar, one gun shot injury on the stomach has been found, on Durgesh, the one single gun shot injury has been found on head, both proved fatal and resulted into their death. Against the two gun shot injuries, the allegation of indiscriminate firing against 26 named accused persons and 30-35 unknown accused persons raises suspicion about the motive of the informant in implicating innocent persons in the backdrop of the fact that she was not an eye witness to the occurrence and got the knowledge from her father's friends.

Further on perusal of the case diary shows that Dy. Superintendent of Police in his supervision note considering the petition that Binay Rai and Md. Alim Khan have falsely been implicated had directed the Investigating Officer to verify their roles before taking decision in the matter. However, Investigating Officer submitted charge sheet against the accused persons to beat the 90 days mandatory period envisaged under Cr.P.C.



Further as per the case diary, the witnesses have stated about one of the accused namely, Alim Khan, that he is 75 years old and as per the C.C. Tv. Footage, he after offering '*Namaj*' returned to his home and remained inside home at the time of occurrence. Further, one Binay Rai serving the Indian Army was at the relevant time posted at Arunachal Pradesh but he too has been named as an accused in the present case.

Against the indiscriminate firing allegation against the accused persons including the petitioner herein, only two gun shot injuries in the post-mortem report clearly shows that the petitioner herein deserve bail in the backdrop of the fact he is in custody since 02.02.2022 and the charge sheet stands submitted. Further similar situate co-accuseds namely Ram Shankar Bind @ Rama Shankar Bind, Yogendra Bind and Guput Bind have since been released on bail vide Cr. Misc. No.17621/2022 on 23.08.2022.

Learned APP represents the State submits that there is allegation of indiscriminate firing against all the accused persons including the petitioner herein causing death of two persons and as such, he does not deserve bail.

This Court has gone through the FIR, the different paragraphs of the case diary, the post-mortem report and comes to the conclusion that though there has been unfortunate killing of two innocent persons, it is equally true that innocents should not suffer as accuseds.



Taking into account the aforesaid facts including the fact that omnibus allegations against has been made accused persons including the petitioner herein of firing and he is in custody since 02.02.2022, charge sheet stands submitted, similar situate persons have been granted bail vide Cr. Misc. No.17621/2022 and ultimately he has to face the trial, this Court is inclined to grant him privilege of bail.

Let the petitioner be released on bail on furnishing bail bond of Rs. 15,000/- (Fifteen Thousand) with two sureties of like amount each to the satisfaction of Chief Judicial Magistrate, Bhojpur at Ara in connection with Koilwar P.S. Case No. 55 of 2022, subject to the following conditions.

(i) one of the bailor should be the family member of the petitioner, who shall provide official document to show his/her *bona fide*;

(ii) the petitioner shall appear on each and every date before the Trial Court and failure to do so for two consecutive dates without plausible reasons will entail their cancellation of bail by the Trial Court itself;

(iii) he shall appear before the concerned police station every months for one year to mark his presence;

(iv) he shall in no way try to induce or promise or threat the witnesses or tamper with the evidence, failing which the State shall be at liberty to take steps for cancellation of his bail



bonds;

(v) the petitioner shall desist from committing any criminal offence again failing which the State shall be at liberty to take steps for cancellation of his bail bonds.

Nothing observed in this bail application shall be taken into consideration during the course of the trial as the same has been observed for considering the bail application of the petitioner herein.

With the aforesaid observations, the bail application is allowed.

(Rajiv Roy, J)

Prakash Narayan /-

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