

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26057 of 2022

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

ARUN RAY S/o Birendra Ray R/o Village- Manacha, P.S.- Koilwar, District- Bhojpur.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

with
CRIMINAL MISCELLANEOUS No. 33317 of 2022

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

Nitish Thakur @ Nitesh Thakur Son Of Sunil Thakur Resident Of Village- Pachrukhiya, P.S.- Koilwar, District- Bhojpur.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

with
CRIMINAL MISCELLANEOUS No. 36113 of 2022

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

RAJU RAI @ RAJU KUMAR Son of Late Yogendra Rai Resident of Village - Pachrukhiya Kala, P.S.- Koilwar, District - Bhojpur

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :
(In Criminal Miscellaneous No. 26057 of 2022)
For the Petitioner/s : Mr.Manoj Kumar
For the Opposite Party/s : Mr.Akhileshwar Dayal
(In Criminal Miscellaneous No. 33317 of 2022)
For the Petitioner/s : Mr.Satish Chandra
For the Opposite Party/s : Mr.Dinesh Singh
(In Criminal Miscellaneous No. 36113 of 2022)
For the Petitioner/s : Mr.Manoj Kumar
For the Opposite Party/s : Mr.Jitendra Kumar Singh

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY



ORAL ORDER

3 05-09-2022 Heard learned counsels for the petitioners and learned APP for the State.

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 Koilwar 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.

Lovely Sharma, the daughter of the deceased Sanjit Kumar has lodged the FIR on 22.01.2022 at 1:30 A.M. alleging therein that :

(i) on 21.01.2022 at 10:00 A.M. her father Sanjit Kumar (deceased) had gone to Balu Ghat, Kamlau Chak Ghat, Koilwar in connection with 'Bhumi Pujan' but failed to return in the evening;

(ii) subsequently, she got knowledge from the police that two people have been killed due to gun shot injuries and the dead bodies have been kept at Sadar Hospital, Ara;

(iii) accordingly, she reached Sadar



Hospital, Ara and identified her father's body;

(iv) further she got knowledge from her father's friend who were accompanying him that 25 named accuseds and 30-35 unknown accused persons resorted to indiscriminate firing leading to gun shot injuries in the stomach of her father and the head of her father's friend, Durgesh (deceased) who died on the spot;

(v) accordingly, the present FIR was lodged against 26 named accuseds and 30-35 unknown accused persons.

Three petitioners are before this Court, namely, Arun Ray, Nitish Thakur and Raju Rai who are named accuseds.

In these cases, case diaries were called for on 05.08.2022 which have since been received.

Learned counsel for the petitioners submit that a 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. He as such submits that 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.

With the help of the case diary, learned counsel further submits that a bare perusal of paragraph no. 219 of the case diary shows that Dy. Superintendent of Police in his supervision note considering the naming of Binay Rai and Md. Alim Khan had directed the Investigating officer to verify their roles before taking decision in the matter. He further submitted that Investigating officer in a haste submitted charge sheet against the accused persons to beat the 90 days mandatory period envisaged under Cr.P.C.

Learned counsel further submits that how the innocent persons have been implicated in this case can be best seen from the two instances that had been recorded in the case diary at page nos. 226 and 227 and 301. As per the page nos. 226 and 227, the witnesses have stated about one of the accused namely,



Alim Khan, who 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. He further submits that para 301 is dedicated to one Binay Rai, who is serving the Indian Army was at the relevant time posted at Arunachal Pradesh but he has also been named as an accused in the present case. He as such submits that taking into account the two instances, it can be easily concluded that the informant, who was not an eye witness to the occurrence have lodged this FIR to settle score with everyone with whom she or her family had any problem.

He reiterates that against the indiscriminate firing allegation against the accused persons including the three petitioners herein, only two gun shot injuries in the post-mortem report clearly shows that the petitioners herein deserve bail. The last submissions of the counsel for the petitioner is that the 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 counsels for the petitioners further submit that similarly placed co-accused namely Raj Kumar Rai (in Cr. Misc. No. 25296 of 2022) and Raj Kumar Bind (in Cr. Misc.



No. 16989 of 2022), have also been released on bail.

Let the order dated 30.08.2022 and 29.8.2022 passed (in Cr. Misc. No. 25296 of 2022) and Raj Kumar Bind (in Cr. Misc. No. 16989 of 2022) be kept on record.

Per contra, learned APP for the State submits that there is allegation of indiscriminate firing against all the accused persons including the petitioners herein causing death of two persons and as such, they do not deserve bail.

This Court has gone through the FIR, the different paragraphs of the case diary, the post-mortem report and finds favour with the submissions put forward by the learned counsel for the petitioners. There has been unfortunate killing of two innocent persons but the Court is duty bound to see the allegations/false implication aspects.

Taking into account the aforesaid facts including the fact that omnibus allegations against accused persons including the petitioners herein is of firing and they are in custody since 16.03.2022, 5.4.2022 and 15.2.2022, charge sheet stands submitted, similar situate co-accuseds have been granted bail and ultimately they have to face the trial, this Court is inclined to grant them privilege of bail.

Let the petitioners be released on bail on furnishing



bail bond of Rs. 15,000/- (Fifteen Thousand) each 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 bailors should be the family members 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 his cancellation of bail by the Trial Court itself;

(iii) he shall appear before the concerned police station every fortnight for next six months 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 recorded in these bail applications shall be



taken into consideration during the course of the trial as the same have been observed for considering the bail of the petitioners.

With the aforesaid observations, the bail applications are allowed.

(Rajiv Roy, J)

Ravi/Ajay Singh

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