

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49442 of 2021**

Arising Out of PS. Case No.-230 Year-2021 Thana- SHERGHATI District- Gaya

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Lala Shyam Sundar Lal, S/O Late Shiv Shankar Lal R/O Mohalla-New Area,
Bisar Tank, P.S-Civil Lines, District- Gaya.

... .. Petitioner/S

Versus

The State Of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma- Sr. Advocate Mr. Rajesh Kumar- Advocate
For the Opposite Party/s	:	Mr. Pawan Kumar Chaurasia- A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

4 28-02-2022 In compliance of the order dated 24.02.2022, the Senior Superintendent of Police, Gaya, S.D.P.O., Sherghati and the Investigating Officer of the case are present.

The case was taken up on 27.01.2022 and the Court recorded that the easiest thing to do in the case is to reject the bail application of the petitioner as he is alleged to be the main assailant. The occurrence emanates from a land dispute. The land in question belongs to Meera Sinha, the sister of the petitioner as is evident from the documents on record as Meera Sinha has sale deed in her favour, land possession certificate, rent receipt of the land in question i.e. she is giving rent to the government.

Further, in a proceeding under Section 144 of the Cr.P.C., the rule was vacated in her favour by order dated



18.12.2015 (Annexure-3 of the bail petition). Further, the Circle Officer vide letter dated 23.11.2016 (Annexure-4 to the bail petition), in a proceeding under Section 145 of the Cr.P.C. reported that she was recorded tenant in the revenue record of the government, however, rival parties were claiming possession of the land, further the Circle Officer reported after institution of the present F.I.R. based on the inquiry made by the Investigating Officer that the land is mutated in name of Meera Sinha and her purchaser by letter dated 29.06.2021 (Annexure-5 to the bail petition). The petitioner, who is own brother of Meera Sinha is an alumnus of I.I.M., Kolkata and has held the post of Director, Senior Executive Officer, Vice-President at different corporate houses and has been awarded number of prizes including the hall of fame by Planman Media at London and is aged about 65 years, in support of which, Annexure-6 to the bail petition has been annexed.

In the F.I.R., the informant (Shyamdev Yadav) alleges that on the date of occurrence, the petitioner along with 11 named accused persons and about 90 unknown accused persons came on the land and started demarcating the land with white lime for constructing the boundary and the same was objected by the informant's side, who were doing harvesting on the land,



when the petitioner's side started indiscriminate firing and Munna Devi wife of Munni Yadav was hit by the fire made by the petitioner.

The petitioner's side also instituted Sherghati (Dobhi) P. S. Case No.231 of 2021 alleging that they went to the P.O. for measurement of land when the informant's side assembled and badly assaulted the petitioner's side in which the petitioner was also injured along with others.

It was in this background that the learned senior counsel for the petitioner submitted that admittedly, from the documents on record, it manifest that the land belongs to Meera Sinha and the informant's side except for claiming the land, did not produce any chit of paper in their favour with regard to the land in dispute and when the petitioner's side went to measure the land, the informant's side became the aggressor and assaulted the petitioner's side and fired which accidentally hit Munna Devi and falsely implicated the petitioner. It was also submitted that petitioner, who is a senior citizen, aged about 65 years with absolutely clean antecedent, all of a sudden, becomes an assailant, when no weapon has been recovered rather only one empty cartridge has been recovered from the place of occurrence when allegation is of indiscriminate firing by the



petitioner's side in the F.I.R.

It is further submitted that the petitioner along with others were assaulted by informant's side and thus, they went to the police station from where they were referred to the hospital where also the informant's side reached and assaulted and that during course of investigation, only statement of informant and his relatives was recorded. No independent witness supported the prosecution case with regard to firing rather they said that they have not seen, who fired, but they have stated that the land belongs to Meera Sinha and the petitioner along with others were injured. It is further submitted that there was absolutely no investigation on the issue that whether land belongs to Meera Sinha or not, despite I.O. seeking a report from the Circle Officer as aforesaid and why the petitioner would fire when land belongs to his sister whether the informant's side were the aggressor or not.

In this background, the Senior Superintendent of Police, Gaya was directed to file a counter-affidavit clearly spelling out the basis on which the petitioner came to be adjudged by the police based on the investigation as the main assailant.

At this stage, the learned senior counsel for the



petitioner submits that in the event of acquittal of an accused after a prolonged trial, how his period of incarceration would be compensated and if the accused is convicted then he will serve the sentence.

The Senior Superintendent of Police, Gaya in compliance of the order dated 27.01.2022 filed a counter-affidavit, but from perusal of the contents of the counter-affidavit, which was based on the investigation as recorded in the case diary, the Court prima facie, after going through the contents of the counter-affidavit, was of the view that the same was cryptic as it recorded that based on the report of the S.H.O., Dobhi to S.S.P., Gaya and on the basis of the statement of the informant and witnesses present at the place of occurrence, the police came to conclusion that the petitioner had fired.

Further the S.D.P.O., Sherghati, Gaya submitted his report on five points to S.S.P., Gaya i.e. the I.O. recorded the statement of the informant and five witnesses, who supported the prosecution case, further four accused persons were arrested, death review report of Munna Devi was prepared, seizure list of Tata Indica vehicle was prepared along with a recovered bullet and also prepared seizure list of articles seized from the second place of occurrence. Also that the S.D.P.O. conducted



supervision and found the case true against the accused persons including the petitioner.

Further the I.O. also recorded the statement of witnesses under Section 161 of the Cr.P.C. Further the I.O. during the course of investigation, perused the C.C.T.V. footage and prepared seizure list (Para-104 of the C.D.) and also obtained C.D.R., CAF and S.D.R. of mobile number as mentioned in the counter-affidavit. Further during supplementary investigation, I.O. recorded statement of Akshay Kumar and Sameer Shekhar, further tower location of mobile no.6200551722 was found at village- Hario (Para-19 of supplementary case diary), also the weapon used in the occurrence despite best effort could not be recovered.

The Court is aware of its limitation in exercising power under the jurisdiction in which the case is being taken. The Court cannot interfere with the investigation carried by the police at the stage when bail of an accused is under consideration, but can definitely look into the investigation to arrive at a conclusion for deciding whether to grant or not to grant bail to the petitioner, when the petitioner is alleged to be the main assailant.

The Senior Superintendent of Police, Gaya submits



that she has joined recently on 06.02.2022 and the investigation carried in the present case was done by the I.O., the S.D.P.O. and the then the S.S.P., Gaya. The Senior Superintendent of Police Gaya very fairly submitted that the case requires a re-look and further investigation. The Court will not comment further rather will leave the issue to the wisdom of the S.S.P., Gaya to take action in accordance with law.

Since the counter-affidavit filed and the documents annexed and the statement of the witnesses as recorded therein, prima facie gives an impression for the purposes of bail that the witnesses are related to the informant and though they have said that it was a petitioner, who fired killing the deceased, but the statement is so divergent that it is difficult at this stage to come to a conclusion that they were eye witnesses to the occurrence and considering the background of the petitioner and also that no weapon has been recovered, statement of Munni Yadav, the husband of the deceased was recorded and taking into consideration the submission of the learned senior counsel for the petitioner into consideration, the petitioner, above-named, 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



A.C.J.M., Sherghati, Gaya in connection with Sherghati (Dobhi)

P. S. Case No.230 of 2021.

The application stands allowed.

(Satyavrat Verma, J)

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