

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50662 of 2021

Arising Out of PS. Case No.-425 Year-2020 Thana- TURKAULIYA District- East Champaran

Rajan Sahani S/o Ramraj Sahani, R/o village- Raghunathpur, Ward No. 2,
P.S.- Turkauliya, Raghunathpur O.P., District- East Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. P. K. Shahi, Sr. Advocate.

Mr. Karandeep Kumar, Advocate.

For the Opposite Party/s : Mr. Ram Sumiran Rai, APP.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

6 23-08-2022 Heard Mr. P. K. Shahi, learned senior counsel along

with Mr. Karandeep Kumar, learned counsel appearing on

behalf of the petitioner and Mr. Ram Sumiran Rai, learned

A.P.P. for the State.

2. Let the defect(s), if any, be removed within two

weeks of the complete start of the physical Court in normal

course.

3. The petitioner seeks regular bail in connection with

Turkauliya (Banjariya) P.S. Case No. 425 of 2020 for the

offence punishable under Sections 324, 326 and 307/34 of the

Indian Penal Code and Section 27 of the Arms Act. Later on, on

death of the deceased Chhabila Singh @ Kunwar Singh, Section

302 IPC was added.

4. The prosecution case, in brief, is that the informant



who is the brother of the deceased gave written information before the S.H.O., Turkauliya P.S. on 03.07.2020 that on 01.07.2020, six accused persons came near his shop armed with fire arm in which three named accused fired upon his brother Chhabila Singh @ Kunwar Singh who was available at his shop at that time. The bullet shot of the petitioner hit the body of the victim and thereafter the victim was taken to the hospital for treatment and in course of treatment, the brother of the informant died at Vinayak Palika Hospital, Patna on 26.07.2020. Postmortem of the dead body was conducted on 26.07.2020 at Sadar Hospital, Motihari, East Champaran. Post mortem reveals the cause of injury due to fire arm and the cause of death due to severe septicemia leading to septicemic shock.

5. Mr. P. K. Shahi, learned senior counsel assisted by Karandeep Kumar, learned counsel appearing on behalf of the petitioner, at the outset, drawn attention of this Court to the statement made in Para-3 of the bail application that the petitioner has been made accused in altogether 19 cases and the allegations are of serious nature. Out of all the cases mentioned in Para-3, petitioner has been acquitted in almost six cases and he is on bail in the remaining cases pending against him. He has submitted that merely the criminal antecedent of the petitioner will not affect so far as the merits of present case is concerned



and in this regard, he submitted that the incident took place on 01.07.2020 and the F.I.R. was lodged on the written information given by the informant on 04.07.2020. No explanation has been given in the F.I.R. as to what led the informant not to lodge the F.I.R. immediately on 01.07.2020 when the police station is just 2 Kms. away from the place of occurrence, but in the F.I.R. the place of occurrence has been shown 13 Kms away. The incident took place around 7 PM near Railway rack point. He further submitted that from perusal of the F.I.R., it appears that the victim was senseless and he was brought to Rahmaniya Hospital on the same day and thereafter for better treatment he was taken to Ford Hospital and then to Vinayak Palika Hospital, Patna. But in course of investigation no evidence was collected to that effect to establish the said fact as to whether the brother of the informant was treated in any of the hospital in want of any discharge certificate issued by the two hospitals and dead body carrying certificate from the Vinayak Palika Hospital, Patna. He further submitted that the delay in lodging of the F.I.R. and the materials collected in course of investigation would show that no case is made out against the petitioner and it appears that the deceased had died his natural death. The petitioner was falsely implicated in the case due to previous enmity with his brother for their supremacy over the rack point, and in fact no



such incidence took place in front of the informant who claims to be the eye witness of the present case. He had emphatically stated that there is contradiction in the statement of the informant as it would appear from Para-60 of the case diary wherein the fardbeyan of the informant has been recorded after the death of his brother on 26.07.2020 in which he has made general and omnibus allegation against the accused persons named in the F.I.R. though in the F.I.R. dated 04.07.2020 he had made specific allegation of firing against the petitioner. The testimony of the informant is not trustworthy. Mr. Shahi further submitted that even the independent witnesses whose statements have been recorded in Para-50, 51 and 120 of the case diary are contradictory to each other and have been recorded after much delay and almost all the other witnesses are hearsay witnesses. In Para-50 of the case diary, independent witness Gyaneshwar Purohit has claimed himself to be the eye witness of the occurrence, but his statement recorded under Section 161 Cr.P.C. is contrary to the statement of Akhil Kumar Singh recorded in Para-120 of the case diary, who has also claimed himself to be the eye witness and he had accompanied Chhabila Singh (deceased) to the place of occurrence after the deceased had received phone call. The statement of this witness reveals that he has not made any specific allegation against the



petitioner that the petitioner had fired upon the deceased which led to his death. In course of investigation, I.O. has not recorded the statement of any of the close family members of the deceased, even the statement of the wife and children of the deceased were not recorded nor they have given information of murder to any police officials about the alleged commission of murder of Chhabila Singh immediately after the incidence which allegedly took place on 01.07.2020 or after the death of the deceased. The post mortem report also does not support the allegation made in the F.I.R. as the opinion of the doctor regarding the cause of death is severe septicemia leading to septicemic shock, though the injury has been caused due to fire arm. Further submission is that the investigation is handy work of the investigating officer and the same has not been carried out in accordance with law and the present petitioner has falsely been implicated in the case due to some previous enmity with the informant and the deceased. He further submitted that the petitioner is in custody since 02.11.2020 and the similarly situated co-accused Manjay Sahani and Omprakash Sahani against whom there is allegation of having fired upon the deceased have already been released on bail by co-ordinate Benches of this Court vide orders dated 19.01.2021 and 09.02.2021 passed in Cr. Misc. Nos. 34709 of 2020 and 39747



of 2020. On these grounds, the petitioner seeks to be released on bail.

6. Mr. Ram Sumiran Rai, learned A.P.P. appearing for the State has opposed the prayer for grant of bail to the petitioner. He submitted that in the F.I.R. dated 04.07.2020, specific allegation of firing on the deceased is against three accused persons named in the F.I.R., but the bullet fired by the petitioner injured the deceased. The informant is the eye witness and he has seen the incidence with his own eye. Informant in his further statement as well as fardbeyan has given consistent statement that the petitioner had fired upon the victim who subsequently died in course of treatment because of fire arm injury. He further submitted that the cause of death is due to septicemic shock and the post mortem supports the allegation that fire arm injury was found on the body of the deceased, which is attributable to the present petitioner. He draws attention to the statement made in Para-3 of the bail application that the petitioner has got a long list of criminal history of committing offence of serious nature, as such, it would not be in the interest of the society and public at large to release the petitioner on bail.

7. Having considered the rival submissions of the parties and on careful consideration of allegations made in the F.I.R. and the materials collected in course of investigation, it



appears that there is contradiction in the version of the informant. The incidence as alleged in the F.I.R. took place on 01.07.2020 while the written information was given to the S.H.O., Turkauliya (Banjariya) on 04.07.2020 and no reason for the delay has been recorded though it has been stated in the F.I.R. that the victim was undergoing treatment. The police station is only 13 Kms. away from the place of occurrence and murder was committed at wee hours in the evening at about 7 PM in densely populated market area near railway rack point, but no statement of the neighbour has been recorded. The victim died in course of treatment on 26.07.2022 and the fardbeyan of the informant was recorded at Motihari on the same day in which he has made general and omnibus allegation against all the accused persons named in the F.I.R. No specific allegation has been made against the petitioner that it is the petitioner who had fired upon the deceased. There is delay in lodging of the F.I.R. Petitioner has criminal antecedents and the record reveals either he is acquitted or he is on bail. The testimony of the independent witnesses recorded at Paragraph Nos. 50 and 120 of the case diary is also not beyond doubt as they have made contradictory statement. In course of investigation, I.O. had visited the place of occurrence on 07.07.2020 and has failed to collect any material against the accused persons. The post



mortem report reveals one injury caused by fire arm and the allegation of firing is against three named accused in the fardbeyan recorded on the date of death while in the F.I.R. it is alleged that three named accused fired upon the deceased but the bullet of the petitioner hit the body of the victim. The cause of death is due to severe septicemia leading to septicemic shock and one fire arm injury has been found on the body of the deceased. The death took place in Patna and the post mortem was conducted at Sadar Hospital, Motihari also creates doubt against the prosecution case. This court finds that merely on the basis of criminal antecedent, the claim of bail of the petitioner cannot be rejected under the facts and circumstances of the case mentioned above. I am of the opinion that the petitioner who is in custody since 04.07.2020 has prima facie made out a case to be released on bail.

8. The petitioner, above named, is directed to be enlarged on bail on furnishing bail bond of Rs.25,000/- (Rupees twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, East Champaran at Motihari in connection with Turkauliya (Banjaria) P.S. Case No. 425 of 2020, subject to the following conditions:-

(i) Bailors should be local having sufficient



immovable property within the jurisdiction of the Court concerned.

(ii) Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the Court.

(iii) If the petitioner tampers with the evidence or the witnesses of the case, in that case, prosecution will be at liberty to move for cancellation of bail of the petitioner.

(iv) If the petitioner is found involved in similar nature of offence, after his release on bail, the trial Court shall take steps to cancel his bail bonds.

(v) The court below is directed to verify the criminal antecedent of the petitioner and also to verify as to whether the petitioner has been convicted in any case and if it is found that the petitioner is involved in some other cases as what has been stated in Para-3 of the bail petition, this order will automatically loose its force.

(vi) The petitioner will make his attendance before the concerned police station under which his house is located every fortnightly till conclusion of the trial and on any single default without any valid reasons on the part of the petitioner, his bail bonds shall be cancelled and the concerned SHO of the police station shall submit his monthly attendance report to the Superintendent of Police,



East Champaran.

9. In case of breach of any of the conditions, the trial court will have liberty to take steps to send the petitioner to jail. In addition, it is further made clear that if the informant receives any fresh threat from the petitioner or from his supporters, he is free to inform the trial court and in such event, the trial court is free to take proper step in accordance with law.

10. Superintendent of Police, East Champaran is directed to produce all the prosecution witnesses on the date fixed by the trial court without fail.

11. Any observation made in the present order shall not affect the trial.

12. Accordingly, with the above observation, the present bail application stands disposed of.

(Purnendu Singh, J)

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