

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51032 of 2021

Arising Out of PS. Case No.-671 Year-2019 Thana- LAKHISARAI District- Lakhisarai

MUKESH SINGH Son of Late Laxmi Singh Resident of Village- Pandarak,
Police Station- Pandarak, District- Patna ... Petitioner

Versus

THE STATE OF BIHAR ... Opposite Party

Appearance :

For the Petitioner : Mr. Raj Krishan Jha, Adv.

For the Opposite Party : Mr. Ashok Kumar Singh, APP

**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

2 16-02-2022 Heard the parties through video conferencing.

The petitioner seeks bail in anticipation of his arrest in connection with Lakhisarai P.S. Case No. 671 of 2021 instituted for the offences under Sections 302/34 of the Indian Penal Code and 27 of the Arms Act, 1959.

Learned counsel for the petitioner submits that the petitioner has not been named in the first information report and he has been wrongly added as an accused by the police only on the basis of criminal antecedent. The bail application of the petitioner by the trial Court was also rejected mainly on the basis of criminal antecedent. Learned counsel submits that in all the previous five cases registered against him he has been honourably acquitted by the trial Court and only two cases are pending against him. Learned counsel also relied upon a judgment of the Supreme Court reported in **(2020) 11 SCC, 648**

(Prabhakar Tiwary Vrs. State of U.P.) to submit that the criminal antecedent can not be sole basis for rejecting bail application of an accused.

I have considered the submissions.

It is a case wherein a first information report was registered mentioning that 8 persons came on three motorcycles and opened fire which injured the brother of the informant, later on he succumbed to the injuries and died. The informant has mentioned name of some of the persons who used fire arm and also mentions about the unknown persons who also fired.

Considering the report submitted by the informant, it is apparent that there was unknown persons also apart named as assailants. In such a case where there are unknown persons and the police is conducting investigation, the investigating authorities should be left free to conduct a free and fair interrogation and for the said purpose they may arrest the person whose name figures during investigation. It appears that the name of the petitioner has cropped during investigation and he has been also doubted to be one of the persons who were participating in the said incident.

In the circumstances in the opinion of this Court whether the petitioner may have criminal antecedent or not

immaterial but in the opinion of the Court granting anticipatory bail to such a person is not called for as custodial interrogation may also be required. More so he has a history of criminal cases against him out of which two cases are pending. The judgment passed by the Supreme Court is on different facts which do not apply in the present anticipatory bail application.

This application is dismissed.

(Sanjeev Prakash Sharma, J)

Shamshad/-

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