

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51745 of 2021

Arising Out of PS. Case No.-67 Year-2021 Thana- BENIPATTI District- Madhubani

1. VIVEK KUMAR SINGH @ VIMLESH KUMAR SINGH @ VIMLESH SINGH Son of Jagdish Singh Resident of Village- Mahammadpur, P.S.- Benipatti, District- Madhubani.
2. Surjeet Kumar Singh @ Sujeet Singh Son of Musafir Singh Resident of Village- Mahammadpur, P.S.- Benipatti, District- Madhubani.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 52278 of 2021

Arising Out of PS. Case No.-67 Year-2021 Thana- BENIPATTI District- Madhubani

MANOJ JHA @ MANOJ KUMAR JHA Son of Bhavnarayan Jha Resident of Village - Mohammadpur, P.S.- Benipatti, Distt.- Madhubani.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 72547 of 2021

Arising Out of PS. Case No.-67 Year-2021 Thana- BENIPATTI District- Madhubani

MUSAFIR SINGH Son of Dunilal Singh Resident of Village - Mahamadpur, P.s.- Benipatti, Distt.- Madhubani.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 51745 of 2021)

For the Petitioner/s :	Mr. Y. V. Giri, Sr. Advocate
	Mr. Ravindra Kumar Singh, Advocate
For the Opposite Party/s :	Mr. Choubey Jawahar, APP
	Mr. Raghvendra Sharan Pandey, Advocate
	Mr. Ratanakar Jha, Advocate
	Ms. Kusum Rani, Advocate



(In CRIMINAL MISCELLANEOUS No. 52278 of 2021)

For the Petitioner/s : Mr. Murari Narain Chaudhary, Advocate

For the Opposite Party/s : Mr. Shailendra Kumar Singh

Mr. Ratanakar Jha, Advocate

Ms. Miss Kusum Rani, Advocate

(In CRIMINAL MISCELLANEOUS No. 72547 of 2021)

For the Petitioner/s : Mr. Y. V. Giri- Sr. Advocate

Mr. Ravindra Kumar Singh, Advocate

For the Opposite Party/s : Mr. Abhay Kumar

Mr. Ratanakar Jha, Advocate

Ms. Kusum Rani, Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

8 07-07-2022 **CRIMINAL MISCELLANEOUS No.51745 of 2021**

Heard learned senior counsel for the petitioners,
learned counsel for the informant and learned APP for the State.

The petitioners seek bail in anticipation of their arrest
in a case registered for the offences punishable under Sections
147, 148, 149, 341, 323, 325, 326, 307, 302 and 120(B) of the
Indian Penal Code read with Section 27 of the Arms Act.

At the outset, when the case was taken up, an
observation was made by the Court that *prima-facie* the case
appears to be very heinous where five murders have taken place
as such the Court *prima-facie* in the nature of allegation was not
inclined to exercise it's jurisdiction of extending the privilege of
anticipatory bail to the petitioners.

Learned senior counsel for the petitioners after hearing
the observation of the Court very humbly submitted that no doubt
the case *prima-facie* appears to be heinous but if the matter is not
heard on merits perhaps it would be a travesty of justice and



injustice may be caused.

On hearing the plea of the learned senior counsel for the petitioners, the Court permitted him to make submissions.

The learned senior counsel for the petitioners submits that the informant alleges that on 29.03.2021 at about 1.00 P.M. from a distance of 100-150 meter towards northern direction of the house of Rudra Narayan Das, he heard sound of firing and hulla of people, thus, he ran towards that direction and reached near the house of Rudra Narayan Das from where he saw Musafir Singh, Bhav Narayan Jha and Ghanshyam Jha giving orders to the accused persons to kill upon which Praveen Jha and Navin Jha shot at his nephew, Rana Pratap Singh, who fell down and thereafter, accused Shiveshwar Bharti @ Ful Babu tore the stomach of Rana Pratap Singh with *bhujali*. It is next alleged that Chandan Jha, Kaushik Singh, Baban Singh, Munna Singh and Jhunna Singh fired indiscriminately with their individual pistol at his nephew namely, Birendra Singh @ Biru Singh, who was badly injured. It is further alleged that Bhola Singh, Kamlesh Singh, Manoj Jha, Surjeet Singh (petitioner no.2) and Vivek Kumar Singh @ Vimlesh Kumar Singh @ Vimlesh Singh (petitioner no.1) fired individually upon his nephew namely, Ranvijay Singh and also assaulted him with iron pipe on account of which, he sustained injury and he died on the spot. It is further



alleged that Amarjeet Jha, Ashok Singh, Manoj Singh, Umesh Singh and Mukesh Safi fired individually with their pistols on his nephew Amrendra Singh and also assaulted him with iron pipe on account of which, he also sustained injury. Thereafter, it is alleged that Sujay Safi, Prashant Jha, Vishwajeet Kumar, Anant Choudhary and Ankit Jha assaulted his son namely Manoj Singh with pistol, iron rod and iron pipe on account of which, he received injuries. Thereafter, the injured were brought to Benipatti hospital and all were referred to the D.M.C.H. where during treatment Biru Singh died. Further, it is alleged that two persons had already died at the spot. Thereafter, it is alleged that the informant came to know that other co-accused persons namely, Rajesh Kumar Jha, Shobha Kant Mehta, Rishikesh Jha @ Raja, Abhishek Kumar Jha, Devendra Nath Thakur and Sunaina Devi had also assembled at the house of his co-villager Ashok Singh and planned a conspiracy and thereafter, the present occurrence was committed.

The learned senior counsel for the petitioners submits that the petitioners are persons with clean antecedent and from bare perusal of the allegation as alleged in the F.I.R., it would manifest that the allegations are inherently improbable and patently absurd. It is next submitted that it absolutely does not stand to reason that the informant in the F.I.R. alleges that on



hearing sound of firing, he rushed towards the place of occurrence and even saw the occurrence being committed by the accused persons, it is next submitted that in the F.I.R., it is alleged that on hearing the firing of gun, he ran about 100-150 meter and thereafter he saw the occurrence, it is thus submitted that it is humanly not possible to be so specific in alleging that which accused was carrying which weapon, with such precision and it is very difficult to remember all the names when own family members are being assaulted and that too in such a brutal manner. Learned senior counsel next submits that the informant is related to the deceased and he was present at the place of occurrence when such a heinous act was being committed in which five persons died. It is next submitted that it also defies all logic, wisdom and reasonable criminal behaviour that when the accused were committing the occurrence and the informant being relative of the deceased was present at the place of occurrence and he witnessed the occurrence with so close range then why the accused persons did not kill him, it is submitted that by leaving the informant who was so close to the place of occurrence that definitely amounted to leaving evidence against themselves which no criminal would do. It is next submitted that the F.I.R. does even remotely suggest that the informant was witnessing the occurrence from a place, which was not visible to



the accused persons.

Learned senior counsel for the petitioner submits that during the course of investigation the informant by way of afterthought named one Rajesh Jha in his subsequent statement and when said Rajesh Jha was arrested he took the name of one Sonu Chaudhry, it is next submitted that the police recorded the statement of Rajesh Jha under Section 161 of the Cr.P.C. which would appear at paragraph '16' of the case diary and from perusal of the same it would manifest that he had taken the name of Sonu Jha but he had not named any of the petitioners herein including Manoj Jha and Musafir Singh, learned senior counsel next submits that based on the statement of Rajesh Jha Sonu was arrested and his confessional statement was recorded at paragraph '91' of the case diary wherein he also does not name the present petitioners including Manoj Jha and Musafir Singh, though he named Praveen Jha, Ankit Jha, Chandan Jha, Ful Babu, Sanjeev Kamat, Bhola Singh, Anant Chaudhary, Mukesh, Sujay Safi. Learned senior counsel further submits that during the course of investigation one motorcycle was also recovered from the place of occurrence and based on that one Biku was arrested, it is next submitted that the confessional statement of Biku was recorded at paragraph '249' of the case diary and from perusal of the same it would manifest that he also has not even



remotely suggested the name of the present petitioners including Manoj Jha and Musafir Singh. Learned senior counsel further submitted that even scientific investigation was carried out which stands recorded at paragraph '499' of the case diary and from perusal of the same it would manifest that the said Biku had talked twice to Praveen Jha, the main accused. Learned senior counsel next submits that during the course of investigation the police also arrested the main accused Pravind Jha along with Naveen Jha, Chandan, Someshwar Bharti, Suresh, Bhola Singh, it is next submitted that confessional statement of Praveen was recorded at paragraph '178' of the case diary and thereafter the learned senior counsel draws the attention of the Court to the confessional statement of Pravin Jha and submits that from perusal of the same it would manifest that he has given a vivid description of the occurrence. It is next submitted that though Praveen Jha in his confessional statement has taken the name of these petitioners including Musafir Singh and excluding Manoj Jha but still from perusal of his statement it would manifest that Praving Jha has not taken their name as accused who participated in committing the occurrence, it is next submitted that Pravin Jha in his confessional statement has said that these petitioners and Musafir Singh along with others were member of his Ravan Sena and they had planned to kill the family members of Sanjay Singh



with whom they were aggrieved but when actual occurrence took place Praveen Jha does not even remotely suggest that these petitioners including Manoj Jha and Musafir Singh were also present though Praveen Jha has taken name of Naveen Jha, Ful Babu, Sanjeev Kamat, Bhola Singh, Chandan Jha, Mukesh Safi as having participated in the occurrence. Learned senior counsel thus submits that confessional statement as such does not have any evidentiary value and whatever the confessional statement may be worth of then also as far as these petitioners along with Musafir and Manoj Jha are concerned, they are not alleged to have participated in the occurrence and even if what Praveen Jha alleges in his confession is true then they might have planned for committing the occurrence but in actual there was no *actus reus* committed by them, it is thus submitted that it is only when *mens rea* and *actus reus* come together then only a criminal offence is made out, but in absence of anyone of them, criminal offence is not complete.

Learned senior counsel for the petitioner submits that a very important witness Tapendra Singh (eyewitness) who is own maternal grandson of the informant in his statement recorded at paragraph '387' of the case diary has also not even remotely suggested about the participation of the present petitioners including Musafir and Manoj Jha though he specifically states



name of seven accused persons. Learned senior counsel further submits that a journalist had visited D.M.C.H. when this occurrence had taken place and had recorded the statement of Amrendra Singh, injured, who subsequently died and the journalist had recorded his statement in a pen drive, it is next submitted that the pen drive also forms part of the investigation as it was seized, further it is submitted that even deceased Amrendra Singh in his statement recorded by the journalist does not name the petitioners including Musafir and Manoj Jha. Though the statement of deceased Amrendra Singh was recorded by a journalist which may not form part of the primary evidence but then own nephew of the informant namely Sanjay Singh whose statement was recorded at paragraph '542' of the case diary has very specifically stated that the journalist had recorded the statement of Amrendra Singh, it is next submitted that from perusal of his statement it would manifest that Sanjay Singh has also disclosed that he has heard the voice of Amrendra Singh as recorded in the pen drive on his laptop and has stated that Amrendra Singh had taken name of accused persons but does not disclose the name of the present petitioners including Musafir and Manoj Jha.

Learned senior counsel next submits that another inherently improbable allegation which emerges from the F.I.R.



is that the informant very wisely has named nearly 35 accused persons in the F.I.R. and thus deliberately has assigned role even to the accused persons in the occurrence, i.e., how five persons killed one person, thereafter again five persons killed another one person likewise, thus submits that this also does not appear very probable. Learned senior counsel further submits that Musafir Singh, who is alleged to be an order giver, his prayer for bail is pending consideration in Criminal Misc. No. 72547 of 2021 which is tagged with the present case. It is submitted that Musafir Singh is nearly 82 years old and is a retired government teacher and he has been falsely implicated in the present case by assigning role of an order giver, it is next submitted that form perusal of the F.I.R. it would manifest that to falsely implicate, the informant has very wisely assigned the role of order giver to three accused persons which also seems inherently improbable.

Learned A.P.P. for the State and learned counsel for the informant oppose the prayer for anticipatory bail of the petitioners. Learned counsel for the informant submits that independent witness Vivek Kumar Singh's statement is recorded at paragraph '336' of the case diary and thereafter at paragraph '385' statement of Simran Kumari is recorded. Learned counsel for the informant has read the statement of the aforesaid witnesses in the Court wherein they have supported the



prosecution case and have specifically taken name of the petitioners including Manoj Jha and Musafir Singh, it is next submitted that even Praveen Jha in his confessional statement has taken the name of the accused persons including Musafir Singh but excluding Manoj Jha, it is also submitted that from perusal of the paragraphs '346', '352', '361' of the case diary it would manifest that processes under Section 82 and 83 of the Cr.P.C. have been issued against the accused persons.

Learned senior counsel for the petitioners rebuts the submissions made by the learned counsel for the informant and submits that learned counsel for the informant has read the statements of Vivek Singh and Simran Kumari in the Court, it is next submitted that Simran Kumari is an interested witness and is daughter of one of the deceased. It is further submitted that from perusal of their statement it would manifest that what they have stated before the police is nearly verbatim what the informant has alleged in the F.I.R. which also creates doubt with regard to their statement, it is thus submitted that it is just not possible that informant along with the independent witnesses and Simran Kumari would have seen the occurrence in the same sequence as was witnessed by the informant. Learning senior counsel next submits by relying on paragraph '499' and '500' of the case diary that the police threadbare examined the calls being made by the



named accused persons and the talk between them at the time of occurrence, learned counsel submits that in the technical investigation also nothing has come which can even remotely connect the petitioners including the order giver i.e., Musafir Singh and Manoj Jha with the offence with regard to their presence at the place of occurrence when the occurrence was being committed. Learned senior counsel also submits that as far as submission of learned counsel for the informant that processes under Section 82 and 83 Cr.P.C. have been issued and thus the same disentitle the petitioners from maintaining the anticipatory bail application, is fit to be rejected on the ground that (i) mere issuance of process under Section 82 and 83 Cr.P.C. does not bar maintainability of an anticipatory bail application; (ii) the facts of the case also have to be looked into. It is thus submitted that a supplementary affidavit has been filed and from perusal of the same it would manifest that the I.O. of the case on 29.03.2021 had submitted an application seeking warrant and processes at the same time on the ground that a heinous offence has been committed which may lead to disturbance in the village and the learned Magistrate on 06.04.2021 has issued non-bailable warrant of arrest along with processes under Section 82 and 83 Cr.P.C. which is completely in breach of the mandate as envisaged under Section 82 and 83 of the Cr.P.C. It is next



submitted that issue of process under Section 82 Cr.P.C. may disentitle an accused from seeking the relief of anticipatory bail, but as far as maintainability of anticipatory bail is concerned, the same is maintainable and merit of the case has to be looked into.

Taking into consideration the submissions made by the learned senior counsel for the petitioners, the petitioners above-named, in the event of their arrest or surrender before the learned Court below within a period of six weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs. 10,000/- (Rupees Ten Thousand) each with two sureties of the like amount each to the satisfaction of the learned court below where the case is pending/successor court in connection with Benipatti P.S. Case No. 67 of 2021 subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

CRIMINAL MISCELLANEOUS No. 52278 of 2021

Heard learned counsel for the petitioner, learned counsel for the informant and learned A.P.P. for the State.

In view of the order dated 07.07.2022 passed in Cr. Misc. No. 51745 of 2021, the petitioner who is also a person with clean antecedent, in the event of his arrest or surrender before the learned Court below within a period of six weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like



amount each to the satisfaction of the learned court below where the case is pending/successor court in connection with Benipatti P.S. Case No. 67 of 2021 subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

CRIMINAL MISCELLANEOUS No. 72547 of 2021

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(Satyavrat Verma, J)

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