

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.66930 of 2021

Arising Out of PS. Case No.-432 Year-2020 Thana- HAJIPUR SADAR District- Vaishali

Shekhar Ray, Son of Kedar Ray, Resident of Village - Dighi Khurd, P.S.
-Hajipur sadar, District - Vaishali.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ansul, Advocate Mr. Anuj Kumar, Advocate. Mr. Abhinav Ashok Advocate Mr. Aditya Pandey, Advocate
For the Opposite Party/s	:	Md. Mustaque Alam, APP

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
ORAL ORDER

3 05-04-2022 The applicant is given out of turn hearing on the account of liver ailment of his wife, a fact which is not disputed by the other side.

The applicant/accused in Crime No. 432 of 2020 registered with Hajipur Sadar Police Station for the offences punishable under Sections 302 and 120(B) of the Indian Penal Code as well as Section 27 of the Arms Act, by this application is seeking his release on bail during pendency of the trial.

Heard the learned counsel appearing for the applicant/accused. By drawing my attention to the FIR lodged by first informant Sabita Kumari, he argued that Krishna Kumar who claims to be an eye witness to the incident is a



witness to the FIR and had signed the FIR on 31.07.2020 itself. However the FIR is not reflecting his version about the incident. It is further argued that statement of Krishna Kumar is belatedly recorded by the prosecution and in the wake of pending Title Suit filed by father of this alleged eye witness against the father of the applicant, role of Krishna Kumar is shrouded in the mystery and therefore after completion of investigation, the applicant is entitled for bail.

As against this, the learned learned Additional Public Prosecutor opposed the application by contending that Krishna Kuamr is an eye witness to the incident and he had attributed specific role to the present applicant. It is further argued that wife of the deceased had seen the post event happenings and had implicated the applicant in the subject crime.

I have considered the submissions so advance and also perused the material placed on record including the counter affidavit filed by the State.

The subject FIR is lodged by Sabita Kumari who happens to be wife of the deceased Mukesh Kumar Rai. It is averred in the FIR by Sabita Kumari that her deceased husband was doing the business of sale and purchase of the



land and he had given some money to one Sudhir Rai for purchasing the land of Sudhir Rai. However co-accused Murari Kumar and Shrikant Kumar were prohibiting her husband from entering into the agreement for purchasing the land from Sudhir Rai. The first informant averred that her husband is done to death by accused persons including the present applicant on account of dispute regarding sale and purchase of land, when her husband had gone to the Circuit House for plucking flowers at about 4.30 A.M. of 31.07.2020. She claimed that she had seen the post event happenings when she reached at the spot of the incident after coming to know that her husband has been murdered by the accused persons. She stated that when she reached at the spot she saw the present applicant as well as three co-accused persons running away from the spot of the incident.

First informant Sabita Kumari has lodged this FIR in presence of witnesses Bihari Rai, Krishna Kumar(who claims to be an eye witness) and Sravan Kumar on 31.07.2020. First informant has not claimed in the FIR that she heard from Krishna Kumar that her husband Mukesh Kumar Rai was done to death by the accused persons including the present applicant.



It is not indispute that statement of Krishna Kumar who is witness to the FIR was recorded by the police on 15.10.2020 when he himself was present before the police at the time of lodgement of the FIR by Sabita Kumari. The case diary contains no explanation as to why statement of this sole eye witness is belatedly recorded by the Investigator particularly when this sole eye witness was available to police right from the day of the lodgement of the FIR. To crown this all, it is seen that Dulas Rai, father of this sole eye witness Krishna Kumar had filed the Title Suit bearing Title Suit No. 112 of 2009 against several persons including one Kedar Ray who happens to be the father of the present applicant Shekhar Ray. On this backdrop, sole eye witness Krishna Kumar is stating before the police that in the morning of 31.07.2020 he went out for morning walk and at about 4.30 A.M. he noticed accused persons including the present applicant quarreling with Mukesh Kumar Rai (since deceased) and then they fired bullets at Mukesh Kumar Rai.

Considering this nature of evidence available against the applicant particularly delay in recording the statement of the sole eye witness who was present as witness to the FIR and the fact that the investigation of the subject



crime is already over, I am of the considered opinion that further pretrial detention of the applicant is not warranted and therefore, the order :-

i. The application is allowed.

ii. The applicant/accused in Crime No. 432 of 2020 registered with Hajipur Sadar Police Station be released on bail on executing P.R. bond of Rs.25,000/- (Rupees Twenty Five Thousand) on furnishing surety of the like amount to the satisfaction of the trial court with the following conditions: -

(I) The applicant/accused should not extend any threat, promise of inducement to the persons acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the Court or to any police officer.

(II) The applicant/accused should cooperate the trial court in expeditious disposal of the trial against him.

(III) The applicant/accused should not contact the members of the prosecuting party as well as witnesses in this case in any manner till conclusion of the trial.

(IV) The applicant should not repeat commission of similar offence in future and if he is found to be involved in commission of similar offence, the State is at liberty to apply for cancellation of bail granted to the applicant in the



instant case.

(V) Needless to mention that all the observations made by this Court in this order are prima facie in nature and shall not have any bearing on the trial.

The applicant to remove all office objections forthwith and the Registry to issue the certified copy of this order only after removal of office objections by the appellant/accused.

(A. M. Badar, J)

Bhardwaj/-

U		T	
---	--	---	--

