

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5088 of 2023

Arising Out of PS. Case No.-37 Year-2020 Thana- JAMUI District- Jamui

SANJAY YADAV Son of Girija Yadav R/v- Bhagwana, P.O.- Amrat, P.S.-
Jamui, Dist- Jamui

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Vijay Kumar Sinha, Advocate

For the Opposite Party/s : Mr. Chandra Bhushan Prasad, APP

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 18-09-2023 1. Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. Learned counsel for the petitioner submits that the present application has been filed seeking quashing of the order dated 13.06.2022 passed by the learned Additional Sessions Judge-III, Jamui whereby application of the petitioner for discharge in connection with Sessions Trial No. 317 of 2021, arising out of Jamui P.S. Case No. 37 of 2020 registered for the offences punishable under Sections 302 and 34 of the Indian Penal Code read with Section 27 of the Arms Act has been rejected.

3. Learned counsel for the petitioner submits that from bare perusal of the order passed by the learned Additional Sessions Judge, it would manifest that the discharge application of the petitioner under Section 227 of the Cr.P.C. had been



rejected without due application of mind and without appreciating the facts of the case in its correct perspective. It is next submitted that whenever an application for discharge is filed before the learned Sessions Judge, it is filed at a stage prior to evidence but then the learned trial court has to examine the documents, including the evidence on record, which has surfaced during the course of investigation to arrive at a *prima-facie* satisfaction as to whether the accused is required to be tried or not.

4. The learned counsel for the petitioner next relies on the case diary, a copy of which he has with himself, and submits that the petitioner came to be implicated based on the information furnished by the spy which led to arrest of one Pradeep and he in his confessional statement disclosed the name of the petitioner. It is thus submitted that confessional statement in police custody does not have any evidentiary value and then it becomes very easy for the police to implicate an innocent person based on information of the spy which never comes to the notice of the court until called for.

5. Shri Chandra Bhushan Prasad, the learned A.P.P. for the State relying on the judgment of **Captain Manjit Singh Viridi (retired) vs. Hussain Mohammed Shattaf and Ors.** reported in **(2023) 7 SCC 633** submits that though in the said



case, the application for discharge was filed under Section 239 Cr.P.C. but then there are three modes of discharging an accused as mandated by the Cr.P.C. i.e. Section 227, 239 and 245 with slight variation in the procedure mandated for discharge but then what is to be seen at the stage of discharge is whether a *prima-facie* case is being made out against the accused or not which warrants his trial, sufficiency of evidence etc. is to be seen in the trial and thus submits that the Hon'ble High Court in the case of **Captain Manjit Singh Viridi (*supra*)** had discharged the accused i.e. respondents who are husband and wife and were implicated in a case of murder, as it was alleged that deceased had developed physical relation with the wife of respondent no. 1 and respondent no.1 in connivance with respondent no.2 and one other conspired to kill the deceased through unknown assailants. It is next submitted that the Hon'ble Supreme Court set aside the order of the High Court and held that the settled proposition of law is that at the stage of hearing on the charges entire evidence produced by the prosecution is to be believed. In case no offence is made out then only an accused can be discharged. Truthfulness, sufficiency and acceptability of the material produced can be done only at the stage of trial. At the stage of charge, the Court has to satisfy that a *prima-facie* case is made out against the accused persons. Interference of the Court is



required only if there is strong reason to hold that in case the trial is allowed to proceed, the same would amount to abuse of process of the Court.

6. The learned A.P.P. next submits that from bare perusal of the order by which discharge application of the petitioner had been rejected, it would manifest that the learned Additional Sessions Judge-III, Jamui perused the material on record and thereafter has recorded that para-37 of the case diary records that villagers disclosed about the involvement of this petitioner, para-46 records the confessional statement of Pradeep who also disclosed about the involvement of this petitioner, thereafter Md. Mustkin in his confessional statement also stated about the involvement of this petitioner. It is thus submitted that when such evidences are on record, this Court should refrain from interfering with the order of the discharge.

7. Considering the submissions made by the learned A.P.P. for the State, the Court is not inclined to entertain the quashing application.

8. Accordingly, the quashing application is rejected.

(Satyavrat Verma, J)

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