

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42326 of 2023

Arising Out of PS. Case No.-94 Year-2020 Thana- SALAKHUA District- Saharsa

=====

Nitish Kumar S/O Sharmanand Yadav Resident Of Village- Bhikhari Ghat,
Ps. Alauli, Dist. Khagaria

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr. Yogesh Chandra Verma, Sr. Adv. with Ms. Rashmi Jha, Adv.
For the State	:	Mr. Satyendra Narain Singh, APP
For the Informant	:	Mr. Budhi Lal Yadav, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

5 22-09-2023 Heard Mr. Yogesh Chandra Verma, learned senior
counsel along with Ms. Rashmi Jha, learned counsel appearing
on behalf of the petitioner and Mr. Satyendra Narain Singh,
learned Additional Public Prosecutor for the State. Mr. Budhi
Lal Yadav, learned counsel for the informant is also present.

2. The present application has been placed before this
Court pursuant to order dated 06.09.2023 passed by the learned
coordinate Bench of this Court in Cr. Misc. No. 42326 of 2023.

3. The petitioner prays for grant of his regular bail in
connection with Salkhua P.S. Case No. 94 of 2020, registered
for the offences punishable under Sections 302, 504, 506/34 of
the Indian Penal Code and Sections 25(1-B)(a), 26, 35, 37 of the



Arms Act.

4. Allegedly on 08.04.2020 at about 05:30 pm. while the informant along with her husband and son were coming from the field carrying wheat on horse, in the meantime, 30-35 naxalites and criminals surrounded them out of whom the informant identified 8 person, including the petitioner. It is further alleged that all the accused persons fired on her husband due to which he sustained firearm injury causing his death instantaneously. It is specifically alleged that this petitioner fired upon the waist of the deceased.

5. Learned senior counsel appearing on behalf of the petitioner submits that from the narrations made in the FIR it is evident that there were altogether 30-35 naxalites and criminals who were allegedly firing upon the deceased and as such it is quite improbable that the informant identified 8 persons, including the petitioner, with so precision that the deceased has sustained firearm injury on which part of the body and who is the author of the that injury. The afore-noted fact creates serious doubt over the entire prosecution story. It is next submitted that just after institution of the FIR, the statement of the informant was recorded wherein she has not made any specific allegation against any one, rather a general and omnibus allegation has



been levelled and similar kind of allegation has also been made by the son of the deceased who was said to be present at the place of occurrence along with his mother. He next submitted that the deceased was a veteran criminal having 25 criminal cases on his head and he might have been killed by the person against whom he had inimical terms but only because of the fact that there was some dispute his name has been implicated.

6. It is further submitted that considering the aforesaid facts the other co-accused persons namely Parmanand Yadav @ Paro Yadav @ Pramod and Barun Yadav @ Varun Yadav, against whom there was allegation that they fired on the abdomen and temporal region of the deceased, have been allowed the privilege of bail by this Court, vide order dated 29.08.2022 passed in Cr. Misc. No. 51821 of 2021 and Cr. Misc. No. 64925 of 2021 respectively, copy of which has been brought on record by way of annexure-2 series. Learned senior counsel further drew the attention of this Court that one another co-accused, namely, Sabir Yadav @ Sarbind Yadav having similar allegation of firing which hit in the mouth of the deceased, has also been allowed the privilege of bail by a learned coordinate Bench of this Court in Cr. Misc. No. 70025 of 2021 vide order dated 25.04.2022. The entire facts have been taken note of by



this Court while allowing the bail to co-accused Parmanand Yadav @ Paro Yadav @ Pramod, Barun Yadav @ Varun Yadav and Barun Yadav @ Varun Yadav. He next submitted that the petitioner is a man of fair antecedent with an exception that one Alauli P.S. Case No. 385 of 2018 was instituted but in the said case the police has submitted final form showing him innocent.

7. On the other hand, learned counsel for the informant as well as the State vehemently opposes the bail application and submits that there is specific allegation against the petitioner that he fired upon the waist of the deceased and the postmortem report also corroborates that the deceased died on account of firearm injury.

8. At this stage, learned senior counsel for the petitioner submits that from the postmortem report it appears that the deceased has sustained 8 injuries but none of the injuries is found at the waist of the deceased.

9. Considering the submissions made on behalf of the parties and taking note of the fact that co-accused persons having identical allegation have been allowed the privilege of bail by this Court as well as by the learned co-ordinate Bench of this Court and the parity demands similar treatment, apart from the fact, the informant and other witnesses have made general



and omnibus statement before the police against all, let the petitioner, abovenamed, be released on bail on furnishing bail bonds of Rs. 25,000/- (Rupees twenty five thousands) with two sureties of the like amount each to the satisfaction of learned A.C.J.M.-I, Saharsa in connection with Salkhua P.S. Case No. 94 of 2020, subject to the condition that one of the bailors will be the close relative of the petitioner with further conditions which are as follows:-

(i) The petitioner will cooperate in conclusion of the trial.

(ii) He will remain present on each and every date of trial till disposal of the case.

(iii) He will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.

(iv) In the event of default of two consecutive dates without any cogent reason, his bail bonds will liable to be cancelled.

(v) The court below shall verify the criminal antecedent of the petitioner and in case, at any stage, it is found that the petitioner has concealed his criminal antecedent, the court below shall take immediate step for cancelling the bail bond of the petitioner. However, the acceptance of bail bonds, in



terms of the above-mentioned order, shall not be delayed for this purpose or in the name of verification.

(Harish Kumar, J)

Anjani/-

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

