

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42486 of 2022

Arising Out of PS. Case No.-263 Year-2021 Thana- MAHARAJGANJ District- Siwan

KESHAV RAJ @ AVINASH TIWARY Son of Raj Swami @ Kaushal Kishore tiwari Resident of Village - Kishori Kunj Ashram, Yamuna Nagar, Paani Ghat Chaurahan, Parikrama Marg, P.S.- Vrindavan, District - Mathura U.P.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Yogesh Chandra Verma, Sr. Advocate Mr. Chandra Mohan Jha, Advocate
For the State	:	Mr. Yogendra Kumar, APP
For the Informant/s	:	Ms. Archana Sinha @ Archana Shahi, Advocate

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

10 07-04-2023 Heard learned counsel for the petitioner, learned counsel for the informant and learned APP for the State.

2. Petitioner seeks regular bail in connection with Maharajganj P.S. Case No. 263 of 2021, dated 31.10.2021 registered for the offences punishable under Sections 302 and 120B of the Indian Penal Code and Section 27 of the Arms Act.

3. The substance of the prosecution's case is as follows: it is mentioned in the FIR that the informant resides in Delhi with her mother-in-law and the brother of her husband also resides in Delhi and as per allegation the informant got the information that the accused persons including the petitioner



had an intention to transfer the property of her mother-in-law in favour of some of the co-accused persons by impersonating her mother-in-law and then informant's sister-in-law filed an application at Maharajganj Registry Office and thereafter the victim who happened to be brother of informant's husband got a threatening call from co-accused Roshan Ali who directed him to come at his place for talk but the victim denied to accept his direction and then on the fateful day of occurrence the co-accused persons including the petitioner riding on two motorcycles came at the place of occurrence and started conversation with the victim when he was on way to a Medical Store and during that course suddenly the petitioner got down from the motorcycle and opened fire at the head and neck of the victim from a close range, as a result of which the victim died at the spot and the informant claimed to have seen the alleged occurrence of firing.

4. The main submissions advanced by learned counsel for the petitioner are that the petitioner has been falsely roped in this case on account of long standing enmity running in between the petitioner and the informant and in between them there are several cases running due to property disputes, the real fact is that the informant is not the eye-witness of the alleged



occurrence and she cooked a false story regarding the presence of the petitioner at the alleged place of occurrence at the time of commission of the alleged murder in the FIR, in fact unknown criminals killed the victim for unknown reasons and at the time of commission of the alleged murder the petitioner was not present at the place of occurrence rather he was far away about 934 kilometers from the place of occurrence, on 31.10.2021 at about 12:00 AM he was traveling in his vehicle and paid Toll Tax at Toll Plaza at Srinagar milestone 75 P.S. Murkati in Palwal District and the same can be verified from CCTV footage of the concerned date and on the same date he got his vehicle filled with CNG Gas at Adani Gas Agency at Sihani Market in Faridabad district, during investigation police did not make any investigation regarding the said defence of the petitioner and then the petitioner filed an application before the Court concerned upon which the police was directed to verify the genuineness of the petitioner's defence, after that the police recorded the statement of Manager of Adani CNG Station and in this regard the application's copy filed by the petitioner before the Court concerned as well as the order sheet of the court concerned containing the direction given to the police has been filed as Annexure-2 but the Maharajganj Police could not verify



the petitioner's defence and inconnivance with the informant diverted the investigation and the petitioner was shown as the main assailant in this case and thereafter the petitioner filed Cr. WJC No. 1202 of 2022, before this Court and the same has been disposed of with the observation that:

*“The petitioner may file his representation before the Superintendent of Police, Siwan in the light of order passed in **Surendra Singh Vs. The State of Bihar & Ors. in Cr. WJC No. 153 of 2017** and analogous cases decided on 09.09.2022 directly or through his counsel within four weeks. The Superintendent of Police, Siwan shall decide the representation in the light of the judgment made in **Surendra Singh Vs. The State of Bihar & Ors. in Cr. WJC No. 153 of 2017** and analogous cases decided on 09.09.2022.*

At the time of deciding the said representation, the Hon'ble Supreme Court's order may be considered by the Superintendent of Police, Siwan that mere filing of the chargesheet and framing of the charges cannot be an impediment in ordering further investigation/re-investigation/de



novo investigation, if the facts so warrant, as the victim has a fundamental right of fair investigation and fair trial.”

5. Further submission is that though the petitioner is accused in eighteen cases in addition to the instant matter but most of the said cases have been lodged either by his father, step mother or associates of his father as his father and step mother want to eliminate him from his ancestral property as well as Kishori Kunj Ashram situated at Vrindawan in Mathura District which is a self acquired property of the petitioner and the petitioner has been chargesheeted and the concerned magistrate has taken cognizance of the alleged offences and thereafter petitioner's case has been committed to Trial Court and he has been languishing in jail since 03.11.2021 and during investigation no independent witness supported the allegation of the FIR.

6. On the contrary, learned counsel appearing for the informant has vehemently opposed the prayer for bail of the petitioner and submitted that the petitioner's defence was properly verified by the Court concerned and the same was found false and against the petitioner there are altogether eighteen criminal cases as his antecedents in addition to the



present matter, out of them in one case he has been declared absconder and in other cases he has been avoiding his arrest for a long time and many cases of the said criminal antecedents have been lodged in Uttar Pradesh and as per FIR the petitioner is the main assailant who committed the murder of the victim and there is a direct allegation against him and informant is the eye-witness of the alleged occurrence who supported the said allegation made in the FIR in her re-statement also and petitioner's plea of *Alibi* has not been substantiated by any evidence during investigation.

7. Heard both the sides and perused the FIR and case diary of this case. During the course of argument learned counsel for the petitioner has mainly placed reliance on his defence of *Alibi* and according to him at the time of commission of the alleged occurrence of murder the petitioner was not present at the place of occurrence rather he was far away of several kilometers from the place of occurrence.

8. It is a well established law that the defence of *Alibi* is a weak defence unless it is proved by cogent and reliable evidence as such defence can be easily created or manufactured and the burden of proof is always upon the accused by giving positive evidence to prove such defence, though in a criminal



matter the burden to prove the offences charged always lies upon the prosecution except in some offences and such burden would not be lessened by the mere fact that the accused has adopted the defence of *Alibi* but it is also a well settled principle of law that the accused taking such defence is himself bound to prove his defence of *Alibi*. In the present matter, admittedly the police did not make any conclusion in favour of the petitioner's plea of *Alibi* during investigation and some photographs produced by the petitioner before this Court with this petition regarding his presence at a fuel station during the relevant time of the commission of the alleged occurrence have not been verified or investigated by the police, though in this regard police remained careless but during the course of argument the learned counsel for the informant has drawn the attention of this Court to the statement of one namely, Virendra Kumar, recorded during investigation, in which the said person who was posted at Adani CNG Station, Faridabad, at where the petitioner got his vehicle filled with CNG as per his submission, stated that the video footage of CCTV camera remains stored for thirty days only and after the lapse of the said period the footage automatically gets deleted and he further showed his inability to provide the footage of CCTV camera concerned to date



31.10.2021 which is the date of alleged occurrence and he further stated that one lady namely, Poonam Raj, wife of the petitioner, made a video from the CCTV camera by using her Mobile phone. The said statement of the Manager of Adani CNG Station at Faridabad goes against the petitioner's defence of *Alibi* and moreover the authenticity of the photographs of the footage produced by the petitioner before this Court is to be verified by the technical expert and at this stage it will not be proper to rely upon the said footage of which copies have been filed by the petitioner before this Court vide Annexure-A to the supplementary Affidavit and moreover in the instant matter, admittedly a longstanding enmity was running in between the petitioner and the informant on account of the property dispute and some other reasons when the alleged occurrence took place and the informant claimed to have seen the petitioner as being the main assailant and in the presence of this ocular evidence it will not be proper to place reliance upon the petitioner's plea of *Alibi* particularly when the same has not been substantiated by the sufficient evidence during the investigation and the trial of the petitioner is at initial stage and the victim was brutally murdered in a planned manner and in view of the long criminal history of the petitioner there is a strong possibility of misuse of



privilege of bail, if the same is granted to the petitioner at this stage. Furthermore, the FIR was lodged within three hours of the commission of the occurrence which shows the naturality of the FIR.

9. Considering all the above discussed facts, I am of the considered view that the petitioner does not deserve to the privilege of bail at this stage. Accordingly, his prayer for bail stands rejected.

(Shailendra Singh, J.)

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