

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47624 of 2023

Arising Out of PS. Case No.-291 Year-2023 Thana- BARHARA District- Bhojpur

ANSHU UPADHYAY @ SIDDHARTH PRIYADARSHI Son of Vijay
Shankar Upadhyaya Resident of Bahangava, P.S. Barhara Krishnagarh O.P.,
District Bhojpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ashar Mustafa, Advocate Mr. Pratik Mishra, Advocate
For the Opposite Party/s	:	Mr. Chandra Bhushan Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 02-08-2023 1. Heard learned counsel for the petitioner, learned

A.P.P. for the State and learned counsel for the informant.

2. The petitioner apprehends his arrest in a case registered for the offences punishable under Sections 302 and 120(B) of the Indian Penal Code as well as Sections 25(1-b)a, 26, 35 and 27 of the Arms Act.

3. Learned counsel for the petitioner at the outset submits that the easiest way to deal with this anticipatory bail application is to reject it at the outset in the nature of allegation as alleged in the FIR by the informant who is the son of the deceased and claims to be an eyewitness to the occurrence and alleges that the petitioner to be the assailant of the deceased, but in the same breath the learned counsel for the petitioner submits that rejecting the anticipatory bail application of the petitioner at



the outset would amount to travesty of justice, as discord on account of intense political rivalry between the petitioner and the deceased had led to false implication of the petitioner and the ramification of the occurrence and false implication has the potential of imperiling the fraternity of the village. Learned counsel further submits that the petitioner has antecedent of one case but then the said case was also instituted from the side of the informant in which the police after investigation submitted final form. It is next submitted that the informant alleges that he saw Anshu Upadhyay (petitioner) shot his father from behind on account of which he fell from the motorcycle in front of the shop of Sri Ram Mukhiya thereafter Dhanjee Yadav along with a boy came from behind on a motorcycle and on exhortation of petitioner the accused Dhanjee Yadav and the boy shot his father on the head leading to his death.

4. Learned counsel for the petitioner submits that from perusal of the allegation as alleged in the FIR, it would manifest that the informant who is the son of the deceased claims to be an eyewitness and alleges that it was this petitioner who initially shot his father from behind and thereafter Dhanjee Yadav along with a boy on exhortation of the petitioner shot the father of the informant on his head leading to his death. It is



further submitted that the petitioner has been falsely implicated on account of political rivalry between him and the deceased which would unfold from the submissions made hereinafter. It is next submitted that the date of occurrence is 14.05.2023 at 08:00 a.m. and the FIR came to be instituted on 15.05.2023 at 03:15 p.m. It is also submitted that on 14.05.2023 itself at about 11:05 a.m. the inquest report was prepared. It is, thus, submitted that the occurrence took place at 08:00 a.m. on 14.05.2023, the police station was only 200 meters away from the place of occurrence but then the inquest was done after three hours i.e. 11:05 a.m. but in between these hours also no FIR came to be instituted. It is further submitted that the informant claims to be an eyewitness then why no FIR was instituted promptly. It is next submitted that it absolutely does not stand to reason that as to why no FIR was instituted at least even after the inquest was done, rather the FIR came to be instituted on 15.05.2023 at 03:15 p.m. This amply demonstrates that the time in the meanwhile was utilized to implicate the accused persons including the petitioner by way of afterthought. It is also submitted that whether the informant is an eyewitness or not is also an aspect to be investigated as it does not appear probable that the informant would have gone to look for the deceased on



the pretext that he was getting late in coming back from the village when he had gone for a mediation and thereafter was to go to the police station, when the petitioner had gone to the market to open his shop. It is further submitted that in the background of the allegation, it appears that the informant became a chance witness of the occurrence. Learned counsel for the petitioner next submits that during the course of investigation CCTV footage of the occurrence has been obtained and the same discloses about the occurrence in which it is seen that two accused on a motorcycle dashed the father of the informant who fell and thereafter one boy masked in red towel fired killing him. It is, thus, submitted that human being may tell lie but the circumstances and camera never tell lies. Learned counsel thus submits that when there is CCTV footage of the occurrence then it becomes easy for the investigating agency to decipher the crime. It is further submitted that there was an intense political rivalry between the petitioner and the deceased as the wife of the petitioner in 2018 had defeated the wife of the deceased in the election of Mukhiya, but in 2021 the wife of the deceased narrowly won the election of Mukhiya defeating the wife of the petitioner. It is next submitted that since the wife of the petitioner already stood defeated in the



election as such no useful purpose would have been served by killing the deceased as the post of Mukhiya would not have become vacant. It is also submitted that even the deceased had antecedent and it may be a possibility that he was killed by his enemies and informant not being an eyewitness to the occurrence falsely implicated the petitioner by way of afterthought as the FIR was instituted on 15.05.2023 at 03:15 p.m. when the occurrence had taken place on 14.05.2023 at 08:00 a.m. At this stage, learned counsel for the petitioner draws the attention of the Court to the impugned order to submit that paras 27 and 29 of the case diary record about the CCTV footage and paras 33 and 56 of the case diary record the name of the assailant who killed the deceased.

5. Learned counsel for the petitioner at this stage submits that it absolutely does not stand to reason that why the police is in a hurry. It is further submitted that the FIR was instituted on 15.05.2023 at 03:15 p.m., on 16.05.2023 the investigating officer of the case filed an application seeking N.B.W. against the petitioner and on 18.05.2023 filed an application seeking process under Section 82 Cr.P.C. and on 18.05.2023 itself the learned trial court issued warrant along with process under Section 82 Cr.P.C. and thereafter within four



days process under Section 83 Cr.P.C. was also issued. Learned counsel further submits that it absolutely defies all logic, wisdom and reasonable judicial behaviour that how the provisions of law are breached.

6. Learned counsel for the petitioner very fairly submits that petitioner will not abscond rather will cooperate in the investigation and will present himself as and when required by the investigating officer of the case for eliciting the truth and proving his innocence.

7. Since this Court is not sitting in a jurisdiction to decide the issue raised about issuance of process under Sections 82 and 83 Cr.P.C., as such the Court refrains from recording its view.

8. Learned A.P.P. for the State and learned counsel for the informant opposed the prayer for anticipatory bail of the petitioner. Learned counsel for the informant submits that petitioner is alleged to be the main assailant and earlier also an FIR was instituted against him wherein it was alleged that he attempted to kill the mother of the informant but is not able to rebut the submission of the learned counsel for the petitioner that the FIR instituted against the petitioner earlier was investigated by the police and final form was submitted and the



learned District Judge while rejecting the anticipatory bail application of the petitioner has clearly recorded about the CCTV footage and the name of the assailants which figured in the occurrence.

9. Considering the submissions made by the learned counsel for the petitioner, the petitioner above-named, 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 Barhara (Krishnagarh O.P.) P.S. Case No. 291 of 2023, subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

10. However, it is made clear that if the investigating officer of the case files an application bringing to the notice of the learned court below that petitioner despite giving assurance to this Court is not cooperating in the investigation or is not presenting himself when required by the investigating officer, the learned court below shall be at liberty to cancel the bail bonds of the petitioner after recording reasons.

11. Let a copy of this order be sent to the concerned



police station through the learned trial court.

12. However, it is also made clear that if the charge-sheet is submitted against the petitioner connecting him with the offence then in that event the petitioner will have his remedies available in law.

(Satyavrat Verma, J)

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