

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52456 of 2022

Arising Out of PS. Case No.-404 Year-2019 Thana- ALOULI District- Khagaria

RAJ KUMAR YADAV @ KARI YADAV S/o Pramod Yadav Resident of
Village - Hatwan, P.S. Alauli, District - Khagaria.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Shekhar Kumar Singh, Advocate
For the State	:	Mr. Jagdhar Prasad, App
For the informant	:	Mr. Binod Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

3 16-03-2023 Heard learned counsel for the petitioner, the learned
APP for the State as well as learned counsel for the informant.

Petitioner seeks regular bail in connection with Alauli
P.S. Case No. 404 of 2019 registered for the offence(s)
punishable under Section(s) 302, 447, 504, 506 and 34 of the
Indian Penal Code and Section 27 of the Arms Act.

As per the prosecution, the informant alleged that this
petitioner with his accomplices armed with weapons, like rifle
etc. arrived at the informant's house and the informant's
husband was shot dead by this petitioner over a land dispute.

The main submissions advanced by the learned
counsel for the petitioner are that the FIR of the alleged murder
was lodged on 21.11.2019 at about 08:45 a.m. while as per the



prosecution, the inquest report was prepared on 21.11.2019 at 07:15 a.m. which shows that the police had got the information of the alleged incident before the institution of the FIR and after preparation of the inquest report, the police inquired from the family members of the deceased about their intention to lodge the FIR but they denied to lodge the FIR at that time and took the plea that their mental condition is not good and they will lodge the FIR after the cremation of the deceased and without getting the FIR instituted, the police sent the body of deceased for postmortem examination and accordingly in the absence of the FIR, dead body was postmortemed which casts a serious doubt on the prosecution's allegation. Further submission is that in fact the deceased was an anti-social element and a member of some Naxalite group, owing to which, he might have been murdered at some other place and thereafter his dead body would have been planted at the alleged place and during investigation, the next door-neighbours of the deceased were examined and all of them denied to hear the noise of any firing at the relevant time of commission of alleged murder and stated that they got the information of the alleged incident in the early morning at 04:00 a.m. which also casts a serious doubt on the prosecution's allegation. Further submission is that the family



members of the deceased did not reveal in their statements to have seen the actual killing of deceased by the present petitioner and they stated that they got the knowledge of alleged role of the petitioner from the informant. Further submission is that the petitioner has been languishing in jail since 16.04.2021 having fair and clean antecedent and he voluntarily surrendered before the court below and a land dispute is stated to be the genesis of occurrence but as per investigation made by the police, the prosecution party themselves tried to forcefully possess the disputed land which is under the possession of the accused persons and there was no reason for the petitioner and other co-accused persons to commit the alleged occurrence.

Learned counsel appearing for the informant has vehemently opposed the bail prayer and submitted that at the place of occurrence, blood was found which shows the commission of the alleged crime at the said place and material witnesses at paragraph nos.15 and 16 supported the allegation of alleged murder as well as presence of the petitioner at the place of occurrence and there is specific and main allegation against the petitioner and the postmortem report also corroborates the allegation.

Considering the seriousness of the occurrence which



relates to murder and as per FIR, the petitioner appears to be the main assailant and accused and against him, there is specific allegation of causing firearm injury at vital part of the body of the deceased and admittedly at the time of commission of the alleged occurrence, there was not a good relation between the deceased and the petitioner and postmortem report as well as description of place of occurrence mentioned in the case diary also goes in favour of the allegation, in my view, it is not a fit case for bail to the petitioner. Accordingly, his bail prayer stands rejected.

As according to the petitioner's counsel the case of this petitioner has not been committed till now, hence the court concerned is directed to take steps to commit the petitioner's case, if there is no legal hindrance and thereafter the trial court will take steps to conclude the petitioner's trial in the next one year.

(Shailendra Singh, J)

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