

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52919 of 2022

Arising Out of PS. Case No.-120 Year-2022 Thana- HALSI District- Lakhisarai

Radhe Mahto S/o Late Baldev Mahto Resident of Village- Deera, P.S.- Hilsa,
District- Lakhisarai.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr. Rajesh Ranjan, Adv.

For the Opposite Party/s : Mr. Sanjay Kumar Tiwary, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

3 14-02-2023 Learned counsel for the petitioner is permitted to remove the defect(s), as pointed out by the office, within a period of four weeks' from today.

Heard Mr. Rajesh Ranjan, learned counsel appearing on behalf of the petitioner and Mr. Sanjay Kumar Tiwary, learned Additional Public Prosecutor for the State.

The petitioner seeks regular bail, who is in custody in connection with Halsi P.S. Case No. 120 of 2022 registered for the offences punishable under Section 302 read with 34 of the Indian Penal Code and Section 27 of the Arms Act.

The prosecution case is based on a written report alleging therein that on 26.04.2022 at 08:00 PM, while the informant along with her husband were watering their onion field, at about 08:45 PM, all the FIR named accused persons including the petitioner and three unknown persons came there



and started abusing her husband, when the same was resisted, all the accused persons took her husband out of the field and started assaulting him. The informant raised *hulla*, thereupon Ashok Mahto and the petitioner made open fire with the pistol in their hands, due to which, he sustained firearm injuries. It has also been alleged that the accused persons also fired upon her, however, the same did not hit her. The reason behind the said occurrence is stated that the accused persons used to cut boundary of the field due to which her husband had quarrel with them.

Learned counsel appearing on behalf of the petitioner firstly while drawing attention of this Court to the FIR submitted that from bare perusal of the FIR, it appears that the occurrence took place at about 08:45 PM on 26.04.2022 in the field where there was no source of identification and this FIR has been instituted on the next day at about 15:10 hours on 27.04.2022. However, in the meantime, at about 22:15 hours on 26.04.2022, the inquest report has been prepared and the family members and the informant were all along present and, thereafter, the postmortem has been conducted over the dead body of the deceased at 07:20 AM at 27.04.2022 and from perusal of the postmortem report, it appears that the dead body



was brought to the hospital by Chowkidar Pappu Paswan and Paro Paswan. He further submits that the postmortem report also belies the prosecution case, inasmuch as only one bullet injury has been found over the body of the deceased. He next submits that as the police personnel were all along present right from the place of occurrence till the hospital, where postmortem has been conducted but, surprisingly, neither any written report has been submitted nor *fardbeyan* of the informant has been recorded and, as such, there is every possibility of false implication of the petitioner in view of the fact that there was an old enmity between the parties. He also drawn attention of this Court towards the statement of brother-in-law and nephew of the informant, wherein they have stated that they were seen the occurrence in the light of torch, which appears to be highly improbable in the given facts and circumstances. He lastly submits that, in fact, the informant is not an eyewitness to the alleged occurrence but only on account of the previous enmity, the name of the petitioner and his family members have been given and, moreover, the petitioner is in custody since 01.06.2022 and he is ready to abide by the terms and conditions as would be imposed by the Court.

Learned counsel for the State opposes the application



and submits that specific allegation has been levelled against the petitioner and one Ashok Mahto, who fired from their pistol causing firearm injury resulting into death of the husband of the informant. He further submits that the petitioner is also an accused in one another case.

Learned counsel for the petitioner submits that this case is also arising out of the land dispute pending between the parties.

Regard being had to the submissions made on behalf of the parties and considering the delay in lodging the FIR and the fact that though the police personnel were all along present at the time of inquest and postmortem, but neither petitioner has given her written report nor her *fardbeyan* has been recorded by the police and after a delay of 16:00 hours, a typed copy written report has been submitted further the prosecution case has also not been corroborated by the postmortem report whereas only one injury has been found and, moreover, there is old enmity between the parties due to land dispute, let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.20,000/- (Twenty thousand) with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate-II, Lakhisarai in



connection with Halsi P.S. Case No. 120 of 2022, subject to the condition that one of the bailors will be the close relatives 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)

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