

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23652 of 2021

Arising Out of PS. Case No.-596 Year-2019 Thana- MADHAURAH District- Saran

ANIL GIRI SON OF MAHESH GIRI R/O VILLAGE- BHAWALPUR P.S.
MARHOWRAH DISTRICT- SARAN

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner	:	Mr. Anant Kumar Bhaskar, Advocate
For the State	:	Mr. Kumar Ranjit Ranjan, APP

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 15-03-2024 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. This application has been filed under Section 482 of the Code of Criminal Procedure, 1973, on behalf of petitioner for quashing the order dated 27.01.2021 passed by the court of learned Additional Sessions Judge-XIII, Saran at Chapra, in Sessions Trial No. 193 of 2020 whereby the learned court below has dismissed the application filed on behalf of the petitioner under Section 227 of the Criminal Procedure Code for discharge of the petitioner.

3. The prosecution case in brief is that on the alleged date and time of occurrence, while the police personnel were returning, around seven to eight miscreants stopped their vehicle in front of the police vehicle and started indiscriminate firing



upon police personnel, on account of which one S.I. and one constable died and others got injuries.

4. Learned counsel appearing on behalf of the petitioner submits that the petitioner is not named in the F.I.R.. In course of investigation, one co-accused, namely Abhishek Singh, in his confessional statement disclosed the name of this petitioner that he was private bodyguard of one Bholu Mukhiya. He had further stated that this petitioner had come on the place of occurrence with Bholu Mukhiya on motorcycle and has tried to overpower the police personnel with AK-47 rifle along with others. It is further submitted that nothing has been alleged against this petitioner except these two things and as such, on the basis of confessional statement of co-accused recorded during course of investigation, the petitioner should not be charged and, therefore, the learned court below has committed error in dismissing the discharge petition filed on behalf of the petitioner.

5. On the other hand, learned A.P.P. for the State has vehemently opposed the statements made on behalf of the petitioner and supported the impugned order submitting that there is sufficient material on record against the petitioner and other accused persons. It is next submitted that the points raised



in the instant petitioner are the defence of the petitioner which can only be looked at the stage of the trial and on these grounds the petitioner cannot be discharged and as such, no interference is required by this Hon'ble Court at this stage. It is further submitted that at the stage of framing of charge, the court is only required to take into consideration the veracity of the offence.

6. Having heard the rival submissions advanced by learned counsels appearing on behalf of the parties and perusing the materials available on record, this court is of the view that it is the specific case of the prosecution that this petitioner tried to overpower the police personnel with AK47 rifle. It is settled law that the defence of an accused person cannot be considered at the stage where the accused person wants to be released under Section 227 of the Criminal Procedure Code, 1973. The Hon'ble Apex Court in the case of *M. E. Shivalingamurthy versus Central Bureau of Investigation, Bengaluru* reported in (2020) 2 SCC 768 held that when an accused person requests dismissal under Section 227 of the Criminal Procedure Code, 1973, no consideration of the accused's defence is to be made. At this stage, only the facts mentioned in the F.I.R./Complaint or the materials collected during course of investigation along with the charge-sheet are to be seen. If the materials placed before the



court disclose grave suspicion against the accused, which has not been properly explained, the court will be fully justified in framing of charges and proceeding with the trial.

7. In view of the aforesaid facts and circumstances of the case, this court does not find any illegality, irregularity or error in the impugned order.

8. Accordingly, this application is dismissed.

(Prabhat Kumar Singh, J)

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