

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22885 of 2021

Arising Out of PS. Case No.-50 Year-2020 Thana- SIKRAUL District- Buxar

Md Ashgar Ali @ Asgar Ali Son of Late Savar Ali @ Sabir Ali Resident of
Village- Kamdharpur, P.S.- Koransarai, Dist- Buxar, Bihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Surendra Kumar Singh, Advocate Ms. Tulika Singh, Advocate Ms. Sudha Chandra, Advocate
For the Opposite Party/s	:	Mr. Rabindra Kumar, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

4 05-07-2024 Heard Mr. Surendra Kumar Singh, learned counsel
appearing on behalf of the petitioner and the learned Additional
Public Prosecutor for the State.

2. The petitioner by filing the present application under Section 482 of the Cr.P.C. seeking quashing of the order dated 02.02.2021 passed by the learned Judicial Magistrate 1st Class, Buxar in G.R. No. 1030 of 2020, arising out of Sikraul P.S. Case No. 50 of 2020, whereby and whereunder, the learned Magistrate has taken cognizance for the offences under Section 302 and 120(B) of the Indian Penal Code, read with Section 27 of the Arms Act against the petitioner and others.

3. While assailing the order taking cognizance, it is vigorously submitted that the learned Court has failed to take



into consideration the relevant and vital materials available on record and only taking into consideration extra judicial disclosure made by co-accused Vikram Yadav that too after one and half months of the occurrence, the cognizance of the offence have been taken. It is also contended that there is no substantive materials/evidence, showing the complicity of the petitioner in the present crime; moreover the entire case is based in the premise of enmity between the parties. Referring to the order under challenge, it is also contended that the same is non-speaking and not even a statement of the witnesses has been taken note of, while passing the impugned order of cognizance.

4. On the other hand, learned counsel for the State submits that the order taking cognizance has been passed after perusal of the case record, including the case diary and the learned Court, after having found sufficient ground to initiate proceeding against the charge-sheeted accused persons, including the petitioner, found *prima facie* case under Section 302 and 120(B) of the IPC and Section 27 of the Arms Act.

5. Having heard the learned Advocate for the respective parties, *prima facie*, this Court finds that the name of the petitioner has surfaced on the confessional statement of co-accused person and the Investigating Officer, during



investigation has taken note of the statement of co-accused persons and thus submitted charge-sheet.

6. Suffice it to say that order taking cognizance is always of the offence and not against the offender. If complicity of the petitioner is found, even in the confessional statement of co-accused person, the learned Magistrate is within jurisdiction to take cognizance of the offences constituted against him. At the cognizance stage, the Court is only to see if there is *prima facie* evidence to proceed with the case.

7. This Court does not find any error in the impugned order. The present quashing application stands dismissed.

(Harish Kumar, J)

shivank/-

U		T	
---	--	---	--

