

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44734 of 2024

Arising Out of PS. Case No.-377 Year-2023 Thana- FALKA District- Katihar

PRINCE KUMAR, SON OF PRAMOD HARIJAN VILLAGE- GOTH,
KHARIK, PS- KHARIK, DISTRICT- BHAGALPUR

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Surendra Kumar Singh, Sr. Advocate Mr. Raj Dular Sah, Advocate Mr. Ajit Kumar Singh, Advocate
For the Opposite Party/s	:	Mr. Vinod Shanker Modi, APP

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

- 5 20-09-2024 1. Heard learned Senior counsel for the petitioner and learned APP for the State.
2. The petitioner has preferred this application for grant of regular bail in connection with Falka P.S. Case no.377 of 2023, registered under sections 302, 307, and 34 of the Indian Penal Code and sections 25(1-B)(a), 26, 27 and 35 of the Arms Act.
3. As per the prosecution case, the informant states that two unknown accused persons came on a motorcycle and started to talk to her husband. They asked for a *gutkha* which her husband went to fetch from the shop. Thereafter, it is stated that the accused wearing a black jacket fired from a country



made pistol hitting the husband of the informant in his ribs as a result of which he fell down injured. The accused started to flee away leaving their motorcycle, however the assailant was caught by the co-villagers. On inquiry, he disclosed his name as Prince Kumar ie the petitioner herein. On search, a country made pistol and a live cartridge besides other articles were recovered from his possession. On inquiry, he disclosed the name of the other accused as Vinay Kumar. The accused who had managed to escape was also caught by the police with the assistance of the villagers. The injured was taken to the hospital.

4. Learned Senior counsel appearing for the petitioner submits that the injured having died the next day in course of treatment, section 302 of the Indian Penal Code was added. It is further submitted that from reading of the FIR itself it would be evident that the informant is not an eye witness to the occurrence. The learned trial Court has relied on the statement of the witnesses recorded in paragraph nos. 9, 10 and 11, on perusal of which also it would transpire that they are not eye witnesses to the occurrence but all of them consistently say that on hearing the sound of firing, they reached the place of occurrence. Referring to the postmortem report (Annexure-2),



it is submitted that as against the allegation in the FIR of a single shot being fired, the postmortem report shows two wound of entries which falsifies the prosecution case as levelled in the FIR. There is no eye witness to the occurrence. The petitioner has been falsely implicated in the case. There being no chance of the trial concluding in the near future and the petitioner having remained in custody since 26.10.2023, he be enlarged on bail.

5. The application for bail is opposed by learned APP for the State who submits that the informant is clearly an eyewitness to the occurrence and the petitioner is the main assailant, which is also supported by the confession of the co-accused recorded in paragraph no. 96 of the case diary. It is further submitted that there is no doubt that the petitioner was caught at the place of occurrence.

6. Having heard learned counsel for the parties and taking into consideration the allegation against the petitioner in the FIR wherein he is described as the assailant together with the material that has transpired in course of investigation and specially the petitioner having been arrested at the spot along with the fire-arm, the Court is not inclined to enlarge the petitioner on bail and the application is rejected.



7. Learned trial Court is directed to expedite the trial.

(Partha Sarthy, J)

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