

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46981 of 2024

Arising Out of PS. Case No.-71 Year-2024 Thana- SAUR BAZAR District- Saharsa

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1. Santu Kumar @ Shivam Kumar Son Of Bino Sah @ Bindeshwari Sah Village- Itahara, P.S.- Sour Bazar, Dist- Saharsa
 2. Mantu Kumar Son Of Bino Sah @ Bindeshwari Sah Village- Itahara, P.S.- Sour Bazar, Dist- Saharsa

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Pratik Mishra, Advocate
For the Opposite Party/s	:	Mr. Rajendra Singh, APP
For the Informant	:	Mr. Vinod Murari, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 10-07-2024 Heard the learned Advocate for the petitioners,

learned Advocate for the informant and the learned APP for the

State.

2. The petitioners seeks regular bail, who are in custody in connection with Sour Bazar P.S. (Baijanathpur O.P.) Case No. 71 of 2024, registered for the offence punishable under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

3. Based upon the written report, the prosecution alleges that on 22.01.2024, while the informant along with his father is sleeping on the same bed at around 12:00 midnight, the



petitioners along with three other named accused persons and 5-6 unknown persons variously armed came there and made indiscriminate firing. It is specifically alleged that the bullet fired by *Shankar Sah*, *Anand Kumar Sah* and *Mantu Kumar* hit on the head of his father, leading to his death. The petitioners anyhow saved himself, thereafter accused persons left the place. The reason behind the occurrence was said to be rivalry of *Mukhiya* election.

4. Learned Advocate for the petitioners referring to the FIR, firstly submitted that from the narratives made in the FIR, it would be evident that the alleged occurrence took place on 12:00 of the midnight of 22.01.2024 and the FIR has been instituted at 10:15 in the night of 23.01.2024. Learned Advocate further drew the attention of this Court to the seizure report, which is part of the FIR and submitted that the same has been prepared at 08:25 AM. It is also contended that the petitioners have specifically stated in paragraph no. 13 that the inquest report was prepared on 23.01.2024 at about 08:05 AM and the younger son of the deceased was one of the signatory to the inquest report, but surprisingly, at no point of time, neither the *fardbeyan* of the informant or his family members was recorded nor the written report has been given.



5. Taking note of all this facts, the police has submitted final report and not sent up the petitioners for trial. However, the learned Magistrate differing with the final report, took cognizance of the offence as alleged in the FIR against the petitioners. Hence, the present application for grant of bail is the submission of the petitioners.

6. It is also the contention of the petitioners that even the narratives of the FIR clearly reveals that the informant claims to be an eyewitness and he categorically stated that three persons have specifically caused firing upon the father of the informant. Apart from the allegation of indiscriminate firing against all the accused persons, but surprisingly, the *post-mortem* report does not corroborate the allegation, inasmuch as only one bullet injury has been found over the temple region of the deceased. The copy of the post-mortem report has been brought on record by way of Annexure-3 to the bail application. It is lastly contended that the reason behind the occurrence is said to be an election dispute, but surprisingly, the election took place in the year 2021 and none of the family members of the informant's side was contesting the election and, as such, there can't be any motive to kill the father of the informant. The false implication is also appraised that all the full brothers have been



named in the FIR in order to put pressure and wreck vengeance because of the reason unknown to the petitioners. Be that as it may, it is lastly submitted that the petitioners are in judicial custody since 25.01.2024, having fair antecedent.

7. On the other hand, learned APP for the State as well as the informant vehemently opposes the bail application and submits that the informant was the eyewitness to the occurrence, who specifically stated before the police that it is the *Mantu Kumar*, whose bullet hit on the temple region of his father, causing death. The post-mortem report also suggest that one bullet injury has been received. The witnesses have also supported the prosecution case is the contention of the learned counsel for the State as well as the informant. It is also contended that in fact the informant was not in a good state of mind and thereafter, delay has occurred in lodging of the FIR.

8. Regard being had to the submissions made on behalf of the parties and considering the fact that the informant, who claim to be an eyewitness of the alleged occurrence has neither informed the police nor his *fardbeyan* was recorded at the time of inquest report or the seizure list, which were prepared much before the institution of the FIR. This Court also finds that the police taking note of all this facts have submitted



final report, showing the petitioner as innocent and not sent up for trial, coupled with the fair antecedent and the fact that the investigation of the crime is already complete and cognizance has been taken of the offence against the petitioners, let the petitioners, named above, be released on bail on furnishing bail bonds of Rs. 20,000/- (Rupees twenty thousand) **each** with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate II, Saharsa in connection with Sour Bazar P.S. (Baijanathpur O.P.) Case No. 71 of 2024, 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 petitioners will cooperate in conclusion of the trial.

(ii) They will remain present on each and every date of trial till disposal of the case.

(iii) They 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, their bail bonds will liable to be cancelled.

(v) The court below shall verify the criminal



antecedent of the petitioners and in case, at any stage, it is found that the petitioners have concealed their criminal antecedent, the court below shall take immediate step for cancelling the bail bond of the petitioners. 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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