

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.53926 of 2024

Arising Out of PS. Case No.-200 Year-2023 Thana- PASRAHA District- Khagaria

Dhiraj Kumar, Son of Radhe Sharma @ Radhe Shyam Sharma, Resident of
Village- Tehay, P.S. Pasraha, District- Khagaria

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Vindhya Kesari Kumar, Sr. Advocate

Mr. Ranjeet Kumar Singh, Advocate

For the Opposite Party/s : Dr. Ajeet Kumar, APP

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

4 30-09-2024

1. Heard learned counsel for the parties.

2. The petitioner has preferred this application for grant of regular bail in connection with Pasraha P.S. Case no. 200 of 2023 registered under sections 302, 307 and 34 of the Indian Penal Code and section 27 of the Arms Act.

3. As per the prosecution case, the informant states that on 18.7.2023 at about 8:25 p.m. while he was talking to his son and daughter-in-law, Dhiraj Kumar (petitioner herein), Radhe Sharma, Pravin Kumar and Sonu Kumar armed with country made pistol and *katta* reached there. Dhiraj Kumar shot his son in his chest. His son started to run in an injured condition. Thereafter, it is stated that he fired upon the informant, however, the shot missed him. The informant ran towards his house. Sonu Kumar and Pravin Kumar chased his



son and at the same time resorting to firing. Hearing the sound of firing, it is stated that people started to gather. Giving threats, the accused persons went away. The informant states that his son who had started to run fell down at the *darwaza* of Vinod Sharma. On the informant reaching there, he found that his son was in a seriously injured condition and he died soon thereafter. It is stated that the cause of occurrence is that in the year 2014, Radhe Sharma had sustained a bullet injury for which an F.I.R. was lodged making allegations therein against the informant's son and others. His son had been taken into custody and returned home on being enlarged on bail in March, 2023. It is in retaliation that Radhe Sharma along with his son Dhiraj Kumar and two others had shot and killed his son. The informant states that as a result of the occurrence of his son being shot, neither he nor the members of his family were in a proper mental condition to give *fardbeyan*. Cremation having been done, he is submitting the written statement in police station.

4. Learned Senior Counsel appearing for the petitioner submits that the petitioner has been falsely implicated in the case. For an occurrence alleged to have taken place on 18.7.2023 at 8:25 p.m., the F.I.R was registered on 19.7.2023 at 8:40 p.m. This was after the inquest and the postmortem



examination had been conducted on 18.7.2023 itself. It is submitted that the police came to record the statement of the informant on 18.7.2023 itself, however, he did not give his *fardbeyan* and just stated that he was not in a position to give his statement. Having come to know about the contents of the postmortem examination report that the written statement has been given more than 22 hours later on 19.7.2023.

5. Learned Senior Counsel places reliance on the judgment in the case of Mallik Yadav and Anr. vs. State of Bihar (2022 CRI. L. J. 1617) to submit that as in the instant case, in the said case also preparation of the inquest report, sending the body from the place of occurrence for postmortem examination and autopsy of the deceased were held much prior to the institution of the F.I.R., which was held to be fatal for the prosecution case. Reliance is also placed on the judgment of the Hon'ble Supreme Court in the case of Lalita Kumari vs. Govt. of U.P. & Ors. [2014 CRI. L. J. 470 (SC)]. The petitioner surrendered on 2.1.2024 and is in custody since then. He has no criminal antecedent and charge-sheet has been submitted in the case.

6. The application for bail is opposed by learned A.P.P. for the State. It is submitted that from the contents of the



F.I.R. itself it would transpire that the informant is an eyewitness to the occurrence wherein the petitioner is said to be the assailant having fired from his country made *katta* hitting the son of the informant in his chest. The allegations are supported from the contents of the postmortem examination report. With respect to the judgment relied on by learned Senior Counsel for the petitioner in the case of Mallik Yadav (*supra*), it is submitted that the same was with respect to hearing of criminal appeal of a convict and not in case of an undertrial, who is said to be the main assailant of the deceased. Further with respect to the judgment in the case of Lalita Kumari (*supra*) it was submitted that the issue arising therein was as to whether a police officer is bound to register an F.I.R. upon receiving any information relating to commission of a cognizable offence or the police officer has the power to conduct a preliminary inquiry to test the veracity of such information before registering the F.I.R. It is submitted that the said judgments would not be applicable in the facts of the instant case.

7. Having heard learned counsel for the parties and taking into consideration the facts and circumstances of the case, the allegations against the petitioner being that he shot the



son of the informant with a country made *katta* (firearm) in the chest, the corresponding firearm injury having been found in the postmortem examination report of the deceased son of the informant and the allegation of the petitioner being the main assailant having been supported in course of investigation by the other eye witnesses, the Court is not inclined to enlarge the petitioner on bail and the application is rejected.

(Partha Sarthy, J)

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