

In the Court of Addl. District and Sessions Judge-II, Naugachia
Anshu Kumar & one other ----- VS ----- State of Bihar
[Arising out of Bihpur P.S. Case No.- 174/2020]
(U/S – 302/34 I.P.C. & 27 Arms Act)

12-01-2021

This is an application for regular bail dated 15-12-2020 filed on behalf of accused persons in custody namely, (i) Anshu Kumar and (ii) Jitendra Kumar Rai @ Jitendra Rai @ Baba Jitendra, is put up today for hearing.

Heard Sri Madan Mohan Jha, Learned counsel for petitioners and learned incharge P. P. for State.

As per written Fardbayn of the informant, this instant case was instituted as Bihpur P. S. case No. 174/2020, dated 18-05-2020, U/s – 302/34 I. P. C. & 27 Arms Act. The counsel for petitioners submits that petitioners have not filed any bail application either in any Sessions Court or before Hon'ble High Court, Patna prior to this bail application. The counsel for the petitioners further submits that entire case of the prosecution is false, concocted and it is based on suspicion and the case of the prosecution has not presented fairly and suppressed the real fact which creates doubt on prosecution story. He further submits that the informant is own brother of the deceased and each brothers has got the shops located at Bihpur. If the informant was dealing his shop on 18-05-2020 at 07:30 P. M., then on what account he can disclose the identity as well as manners of occurrence, not only this his fardbayan does not contain the facts that deceased Pappu Pandit was shifted to Hospital for treatment. As the case diary indicates, on rumour, the informant reached at the P. O. and found the deceased in injured condition but no blood was found by the I. O. and apart from it the story of prosecution is concocted. It is further submitted that some part of the prosecution case is based on mobile's transaction and C. D. R. attached to disclose the communication on mobile but no investigation as well as section of I. T. Act introduced, so it becomes the doubtful story which is desirable to consider. He further submits that as per report of the medical expert, three injuries caused on the body of the deceased and three times firing was committed but the seizure list shows that two cartridges were seized hence, the story of false implication is clearly established. His further contention is that no specific motive shown in the commission of this murder, simply on light allegation, no one can commit such serious offence and apart from this old friendship was standing so, the deceased was invited for eating “*prasad*” at the house of one of the petitioner Jitendra. He further submitted that petitioners have been rotting in jail custody since 09-06-2020. He has further stated that petitioners are ready to furnish bail bond with sufficient surety. Hence, prayed to enlarge the petitioners on bail.

Learned Incharge P. P. oppose the prayer of bail and stated that accused Jitendra Rai is named in F. I. R. with one unknown accused and during investigation, name of other co-accused Anshu Kumar has come in light in this case. He further submits that there is clear allegation against the petitioner Jitendra Rai that he came at the shop of brother of informant Pappu Pandit and Jitendra Rai fired three bullets on chest and stomach of Pappu Pandit due to which he sustained grievous injury and he fall down and died. There are six eye witnesses. There is confessional statement of both the petitioners. According to Postmortem Report, there were three bullet wound found on the body of the deceased. Even there is criminal history of both petitioners. He further submitted that offence u/s - 302/34 I. P. C. & 27 Arms Act as alleged against these petitioners are serious and non-bailable in nature and charge has already been framed in this case. Hence, prayed to reject this bail petition.

On perusal of the case record and other relevant papers, the brief story of prosecution case as per Fardbayan of the informant namely, Prince Bhaskar, aged about 38 years, S/o - Late Krityanand Pandit, R/o village - Bihpur, P. S. - Bihpur, District - Bhagalpur is that informant are three brother and all brothers have Kirana shop situated at Singh Market, Bihpur. It is alleged

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that on 18-05-2020, the informant along with his two brothers namely, Pappu Pandit and Bhuwan Bhaskar as well as staff Manjit Pandit, were present at their shop and in the mean time at about 19:30 O'clock, they were shutting down their shop when, Jitendra Rai came at the shop with one other associate. It is further alleged that Jitendra Rai was armed with country made pistol and his associate had masked his face with towel and he was armed with Farsa. Jitendra Rai asked to elder brother of informant namely, Pappu Pandit "Why you didn't come to eat "prasad" at my home" on which the brother of informant replied that he had no time so he couldn't come. Thereafter, Jitendra Rai fired three bullets from country made pistol on chest and stomach of Pappu Pandit due to which he sustained greivous injuries and blood oozed out and he fall down on ground. It is further alleged that on noise of firing and on raising alarm by the informant and others, persons started fleeing away and accused Jitendra Rai and his associated also fled away and Pappu Pandit died on spot. On the basis of the said Fardbayan, an F. I. R. was instituted as Bihpur P. S. case No. 174/2020 dated 18-05-2020, U/s - 302/34 I. P. C. & 27 Arms Act against accused petitioner namely, Jitendra Rai and one unknown accused.

Heard both the parties and perused case record, F. I. R. and case diary. From perusal of the case diary at paragraph - 25, there is re-statement of the informant Prince Bhaskar in which he has stated about firing of three bullets on his brother Pappu Pandit and also mentioned that while fleeing away, Jitendra has asked his other partner naming "Anshu run" which has been corroborated by other witnesses in paragraph - 26, 27, 108, 109, 110. All the witnesses in paragraph - 26, 27 (eye witness), 43, 44 (eye witness), 45 (eye witness), 46, 108 (eye witness), 109 (eye witness), 110 (eye witness) of the case diary have supported the prosecution case. There is criminal history of Jitendra Rai at paragraph - 102 and criminal history of Anshu Kumar at paragraph - 103. There is also confessional statement of Jitendra Rai at paragraph - 129 and confessional statement of Anshu Kumar at paragrap - 131. There is statement U/s - 164 Cr. P. C. of Dr. Rakesh Kumar who has mentioned that Jitendra Baba rang him on the date of occurrence and asked for Rangdari. At paragraph - 144, there is statement U/s - 164 Cr. P. C. of Ajit Kumar who has mentioned that the mobile number which was used for the purpose of this incidence was procured on the basis of his identification documents but the phone was used by Anshu Kumar for last one year. At paragraph - 149, there is postmortem report which indicates that there are three wounds which are caused by fire arms on the body of deceased Pappu Pandit. Even at the paragraph - 29, which is the seizure list of two shells of used cartridges which were found at place of occurrence. At paragraph - 136, 137, the seizure list witnesses have been also examined.

Considering the aforesaid facts and circumstances, I am not enclined to enlarge these petitioners on bail. Hence, the bail petition of (i) Jitendra Rai @ Jitendra Kumar Rai @ Baba Jitendra and (ii) Anshu Kumar is hereby **rejected**.

Sd/-
(AKHAURI ABHISHEK SAHAY)
2nd Additional Sessions Judge,
Naugachia, Bhagalpur
12-01-2021